

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, et al., )  
Plaintiffs, )  
vs. ) No. CJ-96-1499 (H)  
R.J. REYNOLDS TOBACCO COMPANY, )  
et al., ) CONFIDENTIAL.  
Defendants. ) SUBJECT TO PROTECTIVE  
                                    ) ORDER

\* \* \* \* \*

VIDEO DEPOSITION OF MANDELL MATHESON  
TAKEN ON BEHALF OF THE DEFENDANTS  
ON OCTOBER 6, 1998  
IN TULSA, OKLAHOMA  
\* \* \* \* \*

APPEARANCES:

MR. DAVID RIGGS, Attorney at Law, of the firm Riggs, Abney, Neal, Turpen, Orbison & Lewis, 502 West 6th Street, Tulsa, Oklahoma 74119, appearing on behalf of the PLAINTIFFS.

MR. CHARLES J. MIKHAIL, Attorney at Law, of the firm Scruggs, Millette, Bozeman & Dent, P.A., 734 Delmas Avenue, Post Office Drawer 1425, Pascagoula, Mississippi 39568-1425, appearing on behalf of the PLAINTIFFS.

REPORTED BY: DEANN BROWN, CSR, RPR, CRR

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<p>1 APPEARANCES CONTINUED:</p> <p>2 MR. JERRY HUDSON EVANS, Attorney at Law, of the 3 firm Ness, Motley, Loadholt, Richardson &amp; Poole, 151 Meeting Street, Suite 600, P.O. Box 1137, Charleston, South Carolina 29402, appearing on behalf of the PLAINTIFFS.</p> <p>4 MR. J. PATRICK CREMIN, Attorney at Law, of the 5 firm Hall, Estill, Hardwick, Gable, Golden &amp; Nelson, P.C., 320 South Boston Avenue, Suite 400, Tulsa, Oklahoma 74103-3708, appearing on behalf of the WITNESS - MANDELL MATHESON.</p> <p>6 MR. KELLY STEWART, Attorney at Law, of the firm 7 Jones, Day Reavis &amp; Pogue, 2001 Ross Avenue, Suite 2300, Dallas, Texas 75201, appearing on behalf of the DEFENDANT - R.J. REYNOLDS TOBACCO COMPANY.</p> <p>8 MR. SCOTT W. MacLAREN, Attorney at Law, of the 9 firm Gwin &amp; Roby, 1201 Elm Street, 4100 Renaissance Tower, Dallas, Texas 75270, appearing on behalf of the DEFENDANT - THE TOBACCO INSTITUTE</p> <p>10</p> <p>11</p> <p>12</p> <p>13 INDEX</p> <p>14 DIRECT EXAMINATION BY MR. MIKHAIL . . . . . 4 15 CROSS EXAMINATION BY MR. STEWART . . . . . 126 16 CROSS EXAMINATION BY MR. MacLAREN . . . . . 134 17 REDIRECT EXAMINATION BY MR. MIKHAIL . . . . . 135 RECROSS EXAMINATION BY MR. STEWART . . . . . 147</p> <p>18</p> <p>19 PLAINTIFF'S EXHIBITS</p> <p>20 (1) Bates SOO/RJR.0114: Letter to Mr. Bewley dated 5-28-90 . . . . . 120 21 (2) Bates SOO/RJR.0004: Letter to Mr. Murray dated 6-1-91 . . . . . 121 22 (3) Bates SOO/RJR.0535: Letter to Mr. Murray dated 6-3-93 . . . . . 122 23 (4) Bates SOO/RJR.0688: Letter to Mr. Murray dated 5-31-94 . . . . . 123 24 (5) Bates SOO/RJR.1199: Letter to David Powers dated 6-4-96 . . . . . 123</p> <p>25</p>	<p>Page 2</p> <p>1 MS. POTTER: Today's date is October 6, 1998.</p> <p>Page 4</p>
<p>1 S T I P U L A T I O N S</p> <p>2 It is hereby stipulated and agreed by and between 3 the parties hereto, through their respective attorneys, 4 that the deposition of Mandell Matheson be taken on behalf 5 of the Defendants on this 6th day of October, 1998, in 6 Tulsa, Tulsa County, Oklahoma, by DeAnn Brown, Certified 7 Shorthand Reporter within and for the State of Oklahoma, 8 pursuant to subpoena and notice.</p> <p>9 It is further stipulated and agreed by and between 10 the parties hereto, through their respective attorneys, 11 that all objections except as to the form of the question 12 and the responsiveness of the answer, are reserved until 13 the time of the trial, at which time they may be made with 14 the same force and effect as if made at the time of the 15 taking of this deposition.</p> <p>16 * * * * *</p>	<p>Page 3</p> <p>10 2 This is the deposition of Mandell Matheson starting at 11 00:20:13. For the record, the court reporter is DeAnn 12 Brown with Professional Reporters of Oklahoma City. The 13 videographer is Robin Potter with Proof Positive, 14 Incorporated of Oklahoma City. Counsel will now introduce 15 themselves.</p> <p>16 8 MR. MIKHAIL: Counsel for the plaintiffs, Charles 17 9 Mikhail from Pascagoula, Mississippi.</p> <p>18 10 MR. EVANS: Jerry Evans for the plaintiffs. 19 11 MR. RIGGS: David Riggs for the plaintiffs. 20 12 MR. MacLAREN: Scott MacLaren for the Tobacco 21 13 Institute.</p> <p>22 14 MR. STEWART: Kelly Stewart for R.J. Reynolds 23 15 Tobacco Company.</p> <p>24 16 MR. CREMIN: Pat Cremin for Mandell Matheson. 25 17 MR. STEWART: Charles, before you begin, 18 Mr. Matheson is being presented without waiver to the 19 defendant's objections to his testimony, including the 20 Knorr Pennington Doctrine and the First Amendment 21 objections. And I was wondering if we could have an 22 agreement that an objection by Mr. Cremin or by me, 23 objection by Mr. Cremin would be an objection on behalf of 24 all defendants and vice versa so I don't have to say, "me, 25 too".</p>

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<p>1        MR. MIKHAIL: I have no problem with that. An      2 objection is going to be dealt with by the court no matter      3 who it's from, so that's fine.</p> <p>4        MR. MacLAREN: Could I be included in that "me,      5 too"?</p> <p>6        MR. MIKHAIL: You may.</p> <p>7        MR. CREMIN: You're going to be part of the "me,      8 too" club.</p> <p>9        MR. MacLAREN: I meant on behalf of all the      10 defendants so when they asked later why I didn't say      11 anything, I can say, "Well, I would have made all those      12 objections."</p> <p>13        MR. CREMIN: All those brilliant objections.</p> <p>14        THE WITNESS: I don't guess I get to do anything,      15 right?</p> <p>16        MR. MIKHAIL: Just so that I understand and      17 there's no confusion, I understand the basis of your      18 objection but to a certain degree the Court has overruled      19 some of those objections in its ruling on the Motion to      20 Compel discovery of lobbying activities, but to the extent      21 it has not, then is that what I understand your objection      22 is?</p> <p>23        MR. STEWART: Mr. Matheson is going to be giving      24 you answers to your questions today, I just want to      25 preserve the record. The other depositions of Mr. Nance</p>	<p>00:23:03 1        A Yes.</p> <p>00:23:03 2        Q All right. I saw her name on some of the      00:23:07 3 documents.</p> <p>00:23:07 4        A I was going to say, wow, you're quick.</p> <p>00:23:10 5        Q No, you turned over some documents to us, so I      00:23:12 6 recognized the name.</p> <p>00:23:13 7        A Yes.</p> <p>00:23:13 8        Q What type of education do you have, Mr. Matheson?</p> <p>00:23:18 9        A I graduated from high school in Oklahoma City a      00:23:22 10 number of years ago. After I spent a little time in the      00:23:26 11 United States Marines, I went back to school at the      00:23:30 12 University of Oklahoma as, I think, a 25-year-old freshman      00:23:33 13 and was in and out for a period of several years at OU. I      00:23:43 14 did -- I did some classes when I moved to Tulsa at Tulsa      00:23:47 15 University and at Tulsa Community College. I guess the      00:23:51 16 only way I can describe it is I probably have the      00:23:53 17 equivalent of about two years of university education      00:23:56 18 beyond high school.</p> <p>00:23:58 19        Q Okay. Did you major in anything in undergraduate?</p> <p>00:24:03 20        A Well, the general major that I went for was in --      00:24:08 21 was in journalism.</p> <p>00:24:09 22        Q Journalism?</p> <p>00:24:10 23        A Yeah.</p> <p>00:24:11 24        Q You did not get a bachelor's degree?</p> <p>00:24:15 25        A No. No, sir.</p>
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<p>1 and Mr. Rogers were given with the same objection, just to      2 protect the record in case the Court would ever say that      3 discovery was improper. I just don't want a waiver on      4 anything, so I just want it clear on the record.</p> <p>5        MR. MIKHAIL: That's fine.</p> <p>6 WHEREUPON,</p> <p>7        MANDELL MATHESON,      8 after having been first duly sworn, deposes and says in      9 reply to the questions propounded as follows, to-wit:</p> <p>10        DIRECT EXAMINATION</p> <p>11 BY MR. MIKHAIL:</p> <p>12        Q Mr. Matheson, would you state your full name,      13 please?</p> <p>14        A Mandell Matheson.</p> <p>15        Q What do you do for a living, Mr. Matheson?</p> <p>16        A I'm nominally, I guess, president of a company      17 called Matheson Associates, Incorporated. We're a lobbying      18 firm with a minor in public relations, I suppose, but 95      19 percent of our work is in lobbying.</p> <p>20        Q Okay. Matheson &amp; Associates, is that an      21 incorporated entity?</p> <p>22        A It's a Subchapter S corporation.</p> <p>23        Q Okay. And who are the principals in that group?</p> <p>24        A Me, my wife.</p> <p>25        Q Karen?</p>	<p>00:24:16 1        Q Okay. What type of employment have you had?</p> <p>00:24:20 2        Just give me just a brief background since the two years in      00:24:24 3 college. What type of work have you been involved in over      00:24:27 4 the years?</p> <p>00:24:28 5        A I was working during that period of time and I      00:24:33 6 guess I've had kind of a varied career. I've done      00:24:37 7 everything from being a member of the Oklahoma Highway      00:24:41 8 Patrol to owning a restaurant, but my primary background      00:24:45 9 and work is in newspaper. I spent about 13 or 14 years in      00:24:48 10 newspaper, including some radio and television in Oklahoma      00:24:52 11 City and Indianapolis, Indiana.</p> <p>00:24:55 12        I began in about sometime in the '70s doing some      00:25:04 13 freelance writing, advertising, copywriting, primarily in      00:25:09 14 some political campaigns and for a group in Ft. Smith,      00:25:13 15 Arkansas, where I would go over and work, you know, several      00:25:16 16 weeks at a time.</p> <p>00:25:20 17        In 1980, I started the firm that I work with      00:25:23 18 currently, and primarily for about three or four years did      00:25:31 19 media consulting for political candidates in everything      00:25:35 20 from statewide races to the local judges' races and things      00:25:39 21 of that nature. About 1983 and into '84, I started doing      00:25:45 22 some lobbying. And since -- for the last 14 years it's      00:25:50 23 been pretty much just lobbying.</p> <p>00:25:54 24        Q You said media consulting for political      00:25:56 25 campaigns. Just tell me quickly, what does that involve,</p>

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<p>00:25:59 1 what did you do? 00:26:00 2 A Essentially -- and the term media consultant is 00:26:05 3 used, but it's a pretty broad term. I'll take the example 00:26:11 4 of a gentleman who was Attorney General of Oklahoma, Mike 00:26:14 5 Turpin, who had been a district attorney in Muskogee County 00:26:19 6 and he ran for Attorney General. He hired me, and in that 00:26:22 7 process, I would work with him on everything from speeches 00:26:28 8 to his personal presentation. I would write, produce 00:26:36 9 radio, television, newspaper advertising, brochures, any 00:26:42 10 printed materials that the campaign would use. And I would 00:26:47 11 also buy the media, make the media buys for television, 00:26:51 12 radio, newspaper, and then be just generally a consultant 00:26:56 13 to him on how he should present himself, although he didn't 00:27:00 14 need a lot of guidance in that area because he had been in 00:27:03 15 the public arena, so --  00:27:05 16 Q Okay. And you said in about '83 or '84 that you 00:27:10 17 started pretty much concentrating your efforts on lobbying 00:27:13 18 activities; is that correct?  00:27:14 19 A Well, I -- it was kind of mixed in between. I 00:27:17 20 mean, I was still doing some campaigns, but some people 00:27:21 21 came along, wanted me to do some lobbying things, and so I 00:27:25 22 started -- I was doing a little of both for a while until 00:27:28 23 about 19 -- between '84 and '86, I kind of phased out the 00:27:32 24 political races and concentrated on lobbying.  00:27:37 25 Q Okay. You are, as I understand, a contract</p>	<p>00:28:58 1 Q Was that Premier? 00:29:00 2 A Yes. 00:29:01 3 Q Okay. The person who contacted you, did that 00:29:05 4 person ask you on behalf of R.J. Reynolds to begin doing 00:29:10 5 lobbying activity of the Oklahoma legislature on various 00:29:14 6 pieces of legislation and issues that interest R.J. 00:29:17 7 Reynolds? 00:29:17 8 A Not until after I had finished -- we got through 00:29:22 9 that fall and the legislature at that time would go into 00:29:25 10 session in January, and then in the end of December, the 00:29:29 11 first of January, somewhere along there, of about '88, they 00:29:34 12 asked me to become their lobbyist in Oklahoma. 00:29:36 13 Q Okay. Did this person or anyone else from R.J. 00:29:39 14 Reynolds tell you why they selected you to be their 00:29:42 15 lobbyist? 00:29:44 16 A Not really. 00:29:45 17 Q Did you ask or inquire as to why you were 00:29:49 18 selected to be the lobbyist for R.J. Reynolds? 00:29:52 19 A All I know is they interviewed some people, I 00:29:57 20 don't even know who the other people that were 00:29:59 21 interviewed. I know they got a recommendation from 00:30:03 22 somebody, but I'm not sure. 00:30:05 23 Q None of your friends or associates or relatives 00:30:07 24 or anyone tell you that they made a recommendation? 00:30:10 25 A Nobody has taken credit for it yet.</p>
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<p>00:27:41 1 lobbyist for -- 00:27:41 2 A Yes. 00:27:42 3 Q -- R.J. Reynolds, correct? 00:27:44 4 A Yes, sir. 00:27:44 5 Q Have you ever given a deposition before? 00:27:48 6 A Yes, sir. 00:27:48 7 Q Okay. You haven't fallen into that trap yet, but 00:27:53 8 I don't want the two of us to be talking on top of each 00:27:55 9 other, so make sure to wait until I finish the question so 00:27:58 10 that the court reporter can get the answer.  00:28:01 11 A Yes, sir. 00:28:01 12 Q When did you start working as a contract lobbyist 00:28:03 13 for R.J. Reynolds? 00:28:05 14 A The fall of 1987. 00:28:14 15 Q Okay. And under what circumstances did you 00:28:18 16 become a lobbyist for R.J. Reynolds? How did that come 00:28:21 17 about, if you can just tell me?  00:28:24 18 A In how I got there, I don't know. I received a 00:28:28 19 call from somebody at R.J. Reynolds in Winston-Salem, and I 00:28:33 20 don't recall right now who it was. And in the beginning, 00:28:38 21 for the first four or five months, I was not actually 00:28:41 22 lobbying, I was working as a, I guess an hourly consultant 00:28:47 23 on an issue of a new product that they had and worked on 00:28:54 24 that from whenever it was, September or so, until the first 00:28:58 25 of the year.</p>	<p>00:30:12 1 Q Okay. What lobbying activity did you do prior to 00:30:17 2 R.J. Reynolds contacting you? 00:30:20 3 A I had a variety of clients, and I'll have to kind 00:30:24 4 of recall who I was working for about that time, but I -- 00:30:27 5 Q Let me ask you this, are your clients -- is that 00:30:32 6 something that's disclosed publicly in Oklahoma? 00:30:34 7 A Yes, sir. 00:30:35 8 Q Okay. Because I don't want you to reveal any 00:30:37 9 confidential matters. 00:30:38 10 A No, sir. 00:30:39 11 Q Okay. Go ahead. 00:30:40 12 A At the time, I recall I was representing a group 00:30:43 13 called the Rural Telephone Association, and still do 00:30:46 14 represent them. That was a coalition of about 25 small, 00:30:51 15 independent telephone companies. I was working for a group 00:30:57 16 called Environmental Solutions, Incorporated who were 00:31:01 17 working on waste disposal. I believe at the time I was 00:31:10 18 doing what's known as monitoring work for Waste Management, 00:31:14 19 Incorporated. I think I was doing some monitoring that 00:31:20 20 year for the Quik Trip Corporation, which is a chain of 00:31:24 21 convenience stores. 00:31:26 22 Q Okay. 00:31:28 23 A And there may have been some others, but I can't 00:31:32 24 remember. 00:31:35 25 Q Those are the ones that come to mind?</p>

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1 A Yes, sir.  
 2 Q Okay. We say lobbying. What is it that you do  
 3 in your lobbying activities?  
 4 A Lobbying, generally, is -- you know, if you're  
 5 doing it full-time on what's called a proactive basis, is  
 6 to work with members of the Oklahoma legislature, sometimes  
 7 the staff, to either pass, defeat, amend, or work on in  
 8 some other method some legislation that's pending that may  
 9 affect the client.  
 10 Q Okay. Is it fair to say that you attempt to have  
 11 the legislation that is in favor of your client or that  
 12 your client favors passed and have legislation that is, in  
 13 your client's opinion, adverse to the client defeated?  
 14 A Yes, sir.  
 15 MR. CREMIN: Object to the form of the question,  
 16 compound, and I don't like "is it fair to say" because I  
 17 don't know what that means.  
 18 MR. MIKHAIL: Well, I'll break it down in two.  
 19 Q (BY MR. MIKHAIL) Is it fair to say,  
 20 Mr. Matheson, that one of the things that you do as a  
 21 lobbyist is attempt to have legislation passed that your  
 22 client favors?  
 23 A Yes, sir.  
 24 MR. CREMIN: Same objection to "is it fair".  
 25 MR. MIKHAIL: I understand.

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1 Q (BY MR. MIKHAIL) Is it fair to say that one of  
 2 the things you do as a lobbyist is to have legislation that  
 3 is, in your client's opinion, adverse to your client  
 4 defeated?  
 5 MR. CREMIN: Same objection. Go ahead and  
 6 answer.  
 7 A Yes, sir.  
 8 Q (BY MR. MIKHAIL) Okay. Other than legislation,  
 9 what else does a lobbyist work on that is going on in the  
 10 capitol? And let me give you an example what I'm talking  
 11 about. Other than actual bills that are introduced, are  
 12 there resolutions, are there other matters that a lobbyist  
 13 works on other than pieces of legislation? Do you  
 14 understand my question?  
 15 A Yes, sir.  
 16 Q Okay.  
 17 A Some do, some don't work on state rules and  
 18 regulations of agencies. It's a matter of how they set up  
 19 their relationship with the client. You mentioned  
 20 resolutions; that's part and parcel of the legislative  
 21 process, so that would fall under the same general  
 22 category.  
 23 Q Okay. How does a resolution -- what is the  
 24 process for resolutions to take place in the legislature as  
 25 opposed to a bill?

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00:34:05 1 A They're introduced in essentially the same manner  
 00:34:07 2 of a legislator decides to introduce, but the one  
 00:34:12 3 difference is that under Oklahoma law, a joint resolution,  
 00:34:17 4 which is something that's passed by both houses of the  
 00:34:20 5 legislature, has the force and effect of law and can be  
 00:34:25 6 vetoed or approved by the governor, just as any other  
 00:34:30 7 regular bill. There are concurrent resolutions passed,  
 00:34:35 8 which concurrent means it's passed by both the House and  
 00:34:40 9 the Senate, that generally is expected to reflect the  
 00:34:45 10 concerns or opinion of the legislature but does not have  
 00:34:49 11 the force and effect of law.  
 00:34:51 12 A simple resolution is one that's passed in  
 00:34:53 13 either House. I say simple; Senate resolution, simple  
 00:34:58 14 House resolution that may -- it may be to honor the best  
 00:35:04 15 football team or the strawberry queen or it may express  
 00:35:08 16 some thoughts of the legislature.  
 00:35:11 17 Q Okay.  
 00:35:11 18 MR. RIGGS: Or honor coon dogs some days.  
 00:35:15 19 THE WITNESS: Yeah, coon dogs; done that.  
 00:35:15 20 MR. MIKHAIL: That was David Riggs saying that,  
 00:35:17 21 that wasn't me.  
 00:35:18 22 MR. CREMIN: The coon dog was a prior strawberry  
 00:35:22 23 queen is the amazing part of it.  
 00:35:24 24 Q (BY MR. MIKHAIL) Mr. Matheson, I forgot to tell  
 00:35:27 25 you earlier, you said that you were on some medication for

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00:35:30 1 antihistimine. If you need a break at any time, if you're  
 00:35:33 2 not feeling well or if you're --  
 00:35:34 3 A No, I feel fine.  
 00:35:35 4 Q Okay. But if you do, just let me know and --  
 00:35:38 5 we'll take breaks often, but I just want you to know to  
 00:35:41 6 feel free to ask me --  
 00:35:42 7 A Thank you.  
 00:35:45 8 Q -- when you're ready, when you feel  
 00:35:46 9 uncomfortable.  
 00:35:48 10 In all the years that you have worked as a  
 00:35:51 11 lobbyist for R.J. Reynolds, was most of the work you did on  
 00:35:54 12 legislation or did it involve any resolutions in the  
 00:35:57 13 Oklahoma legislature?  
 00:35:58 14 The reason I ask that, let me preface my  
 00:35:59 15 question. In looking at the documents that were produced,  
 00:35:59 16 both by the defendants in this case, by R.J. Reynolds, and  
 00:36:01 17 by you, I didn't really see anything dealing with any  
 00:36:07 18 particular resolutions.  
 00:36:09 19 MR. CREMIN: Counsel, just a point of  
 00:36:10 20 clarification. Do you want to know if he worked on any  
 00:36:12 21 resolution in his life or any resolution affecting RJR?  
 00:36:17 22 MR. MIKHAIL: RJR.  
 00:36:20 23 MR. CREMIN: Okay.  
 00:36:20 24 A I'm trying to recall and it's difficult. There's  
 00:36:29 25 some resolutions that have passed and, you know, in the

<p style="text-align: center;">Page 17</p> <p>00:36:32 1 last few years, simple resolutions expressing some thoughts 00:36:39 2 that because they didn't have the force and effect of law, 00:36:41 3 we didn't really concern ourselves with.</p> <p>00:36:43 4 Q (BY MR. MIKHAIL) Okay. Does anything dealing 00:36:45 5 with tobacco that RJR was interested in, whether they were 00:36:48 6 for or against, by way of a resolution come to mind right 00:36:52 7 now?</p> <p>00:36:54 8 A One that I can think of was a resolution that was 00:36:59 9 passed six, seven years ago that was not, to my knowledge, 00:37:06 10 initiated by anybody in the tobacco industry, but by two 00:37:11 11 members of the legislature who were smokers requiring that 00:37:15 12 there be some indoor location in state buildings where 00:37:23 13 smokers could smoke. That actually zipped through before 00:37:31 14 we really realized it had happened.</p> <p>00:37:33 15 Q So it was after the fact that you learned of it? 00:37:35 16 A Well, pretty much, yes, sir.</p> <p>00:37:37 17 Q Okay. But it does not have or did not have the 00:37:40 18 force of law?</p> <p>00:37:40 19 A Yes, it did, because it was a joint resolution.</p> <p>00:37:43 20 Q Okay. Have you, on behalf of R.J. Reynolds, made 00:37:46 21 any efforts to change the joint resolution?</p> <p>00:37:52 22 A No, sir.</p> <p>00:37:53 23 Q Okay. Has anyone else attempted to change that 00:37:59 24 joint resolution since it passed?</p> <p>00:38:00 25 MR. CREMIN: That he knows about?</p>	<p style="text-align: center;">Page 19</p> <p>00:39:08 1 A Yes. Just like Congress, the session of the 00:39:12 2 legislature that just concluded in 1998 was the second 00:39:16 3 session of the 46th Oklahoma Legislature. When they go 00:39:19 4 into session in 1999, that will be the first session of the 00:39:24 5 47th legislature, and then that will carry over through the 00:39:29 6 year 2000 which will be the second session of the 47th 00:39:33 7 legislature. Legislation that's still alive, for instance, 00:39:36 8 in 1999 will carry, if it hasn't passed, will carry over 00:39:41 9 and be alive in the year 2000.</p> <p>00:39:44 10 Q How long is the session? It's not 12 months, is 00:39:46 11 it?</p> <p>00:39:46 12 A No. Nominally, by constitution, they go into 00:39:51 13 session on the first Monday in February and must adjourn by 00:39:57 14 5 p.m. the last Friday in May.</p> <p>00:39:59 15 Q Okay. And that's -- and then it carries over the 00:40:04 16 same time period in the following calendar year?</p> <p>00:40:06 17 A That's every year because that's set by the 00:40:10 18 constitution in a vote about six or seven years ago, they 00:40:13 19 changed that. You used to go in in January and had, quote, 00:40:17 20 90 legislative days which usually ended sometime in June. 00:40:21 21 There are, however, in the intervening period of time from 00:40:25 22 the adjourning in May until they come back in in February, 00:40:29 23 there are interim committees, studies and meetings, and 00:40:33 24 things of that nature.</p> <p>00:40:34 25 Q Okay. Since you became a lobbyist for R.J.</p>
<p style="text-align: center;">Page 18</p> <p>00:38:01 1 Q (BY MR. MIKHAIL) That you know about, sure. 00:38:04 2 A No, sir.</p> <p>00:38:04 3 Q Okay. Do you remember what year that was? 00:38:07 4 A I can just guess that it was probably '89, '90, 00:38:14 5 somewhere in there. I'm not really sure.</p> <p>00:38:16 6 Q Have you lobbied for R.J. Reynolds continuously 00:38:19 7 since 1987, '88?</p> <p>00:38:21 8 A Yes, sir.</p> <p>00:38:21 9 Q Okay. Are you a full-time lobbyist for -- well, 00:38:24 10 full-time lobbyist?</p> <p>00:38:26 11 A I'm known as a contract lobbyist. I consider 00:38:32 12 full-time because I'm on call for them year-round. My 00:38:37 13 primary work is done during the legislative session.</p> <p>00:38:40 14 Q Okay. But question was not necessarily full-time 00:38:43 15 for R.J. Reynolds, but are you a full-time lobbyist as a 00:38:45 16 trade or profession?</p> <p>00:38:46 17 A Yes, sir.</p> <p>00:38:47 18 Q Okay. And you have worked as a lobbyist for R.J. 00:38:49 19 Reynolds every legislative session since 1987, fall of '87, 00:38:54 20 early '88?</p> <p>00:38:54 21 A Yes, sir. I did not work in the session in '87 00:38:57 22 because the session was over, so I began actual lobbying 00:39:01 23 work in 1988.</p> <p>00:39:02 24 Q Okay. How does that work? My understanding is 00:39:05 25 that you have two year sessions; is that correct?</p>	<p style="text-align: center;">Page 20</p> <p>00:40:38 1 Reynolds, have you been a contract lobbyist for any other 00:40:42 2 tobacco manufacturer?</p> <p>00:40:45 3 A No, sir.</p> <p>00:40:45 4 Q Have you been a contract lobbyist for the Tobacco 00:40:48 5 Institute?</p> <p>00:40:50 6 A Yes.</p> <p>00:40:51 7 Q Do you remember what years?</p> <p>00:40:53 8 A Yes, sir. Fall of 1986 and up through the final 00:41:01 9 part of the legislative session in '87.</p> <p>00:41:06 10 Q So that was before you became a lobbyist for RJR?</p> <p>00:41:10 11 A Yes, sir.</p> <p>00:41:11 12 Q Okay. Do you know if the Tobacco Institute 00:41:14 13 recommended you to RJR?</p> <p>00:41:16 14 A I do not know that, sir.</p> <p>00:41:17 15 Q Okay. How did you become a lobbyist for the 00:41:20 16 Tobacco Institute?</p> <p>00:41:21 17 A The lobbyist for the Tobacco Institute then and 00:41:25 18 now, Ken Nance, talked to me in the fall of 1986 about 00:41:33 19 doing some work on a pending local resolution in this 00:41:41 20 area. And at that point, I talked to a gentleman in 00:41:47 21 Denver, I think Stan Boman, and we came to some agreement 00:41:52 22 and I started doing the work on the local, and then that 00:41:57 23 worked into something else.</p> <p>00:41:58 24 Q Okay. Am I understanding you correctly that Ken 00:42:02 25 Nance, at the time that he approached you, was a lobbyist</p>

<p style="text-align: right;">Page 21</p> <p>1 for the Tobacco Institute?</p> <p>2 A Yes, sir.</p> <p>3 Q Okay. And he approached you about the prospect</p> <p>4 of you also becoming a lobbyist for the Tobacco Institute</p> <p>5 on some local issues?</p> <p>6 A If I could explain a point there. Under the</p> <p>7 lobbying act in Oklahoma, something you do at the local</p> <p>8 level does not fall under the lobbying act. So I don't</p> <p>9 know what you would -- how you would characterize what I</p> <p>10 did during that period of the fall that I did here locally</p> <p>11 in Tulsa. I was doing work for the Tobacco Institute, but</p> <p>12 under the strict definition, it wasn't lobbying.</p> <p>13 Q Okay. Were you attempting to work either for or</p> <p>14 in favor of certain proposed ordinances for cities and</p> <p>15 towns?</p> <p>16 A Yes, sir.</p> <p>17 Q Okay. What particular ordinance was Ken Nance</p> <p>18 interested in you working on?</p> <p>19 A More the Tobacco Institute than Ken himself.</p> <p>20 Q Okay. I understand.</p> <p>21 A But the -- at that time, the City of Tulsa</p> <p>22 City/County Health Department, which is made up of really,</p> <p>23 basically, the Tulsa County area only, was considering the</p> <p>24 idea of a -- and I'm trying to recall exactly how it was</p> <p>25 done, but to prohibit smoking in certain public areas. And</p>	<p style="text-align: right;">Page 23</p> <p>00:44:59 1 believe, five commissioners. And so I then began working,</p> <p>00:45:06 2 talking to either the staff members for the commissioners</p> <p>00:45:10 3 or the commissioners themselves regarding a proposed</p> <p>00:45:13 4 ordinance.</p> <p>00:45:14 5 Q I take it that the businessmen that you suggested</p> <p>00:45:19 6 or asked be in attendance shared your client, the Tobacco</p> <p>00:45:22 7 Institute's, view as it related to the ordinance?</p> <p>00:45:25 8 A Well, I don't know that specifically. I</p> <p>00:45:31 9 contacted people in the restaurant business, bowling alleys</p> <p>00:45:33 10 and things like that and urged them to attend but without</p> <p>00:45:38 11 ever having any specific conversations with any of them.</p> <p>00:45:40 12 Q What specifically did the Tobacco Institute ask</p> <p>00:45:44 13 you to attempt to do as it related to the ordinance?</p> <p>00:45:49 14 A I don't know that there was a specific statement,</p> <p>00:45:53 15 but the general -- I guess the general idea was to try to</p> <p>00:46:03 16 stop something like that from passing.</p> <p>00:46:05 17 Q Okay. So they were against it?</p> <p>00:46:08 18 A Yes, sir.</p> <p>00:46:07 19 Q And they wanted you to exert some effort to make</p> <p>00:46:11 20 sure it's defeated, correct?</p> <p>00:46:12 21 A Yes, sir.</p> <p>00:46:13 22 Q And what was the reason that the Tobacco</p> <p>00:46:14 23 Institute wanted this resolution or ordinance defeated?</p> <p>00:46:24 24 A I think that generally as a trade organization</p> <p>00:46:31 25 that it was their feeling that they did not want --</p>
<p style="text-align: right;">Page 22</p> <p>1 I think it would include public buildings and some private</p> <p>2 businesses such as restaurants or bowling alleys, things of</p> <p>3 that nature.</p> <p>4 Q Was that the Smoking in Public Places Act?</p> <p>5 A The Smoking in Public Places Act is a state</p> <p>6 statute that was passed in 1987.</p> <p>7 Q Okay. Was this a similar version but on an</p> <p>8 ordinance level?</p> <p>9 A Yes, it would have -- but as it turns out, the</p> <p>10 City/County Health Department figured out they can't pass</p> <p>11 ordinances. They can pass a resolution but it would have</p> <p>12 no force and effect of law, and so they made a</p> <p>13 recommendation to the city commissioners at that time.</p> <p>14 Q Okay. And what work did you do as it related to</p> <p>15 that ordinance?</p> <p>16 A I attended some of the City/County Health</p> <p>17 Department meetings. They had two or three meetings on</p> <p>18 that. I didn't actually participate in the meetings, I</p> <p>19 just watched what happened. I encouraged some business</p> <p>20 owners to be there to state their feelings about the</p> <p>21 ordinance or the thought of an ordinance or the proposal.</p> <p>22 When it went to the level of being sent to -- at that time</p> <p>23 we had the commission form of government. We now have a</p> <p>24 council, mayor form of government. We had a commission</p> <p>25 form of government at that time with a mayor and, I</p>	<p style="text-align: right;">Page 24</p> <p>00:46:35 1 particularly private businesses, the general approach has</p> <p>00:46:43 2 been that government can kind of do what government wants</p> <p>00:46:51 3 to, but that in private businesses; restaurants, bowling</p> <p>00:46:54 4 alleys, this building, this office are private businesses</p> <p>00:47:01 5 and they can do as they choose and that they did not want</p> <p>00:47:05 6 an entity of government telling private enterprises what to</p> <p>00:47:09 7 do.</p> <p>00:47:10 8 Q Are you saying that the Tobacco Institute's</p> <p>00:47:12 9 concern was the freedom of private businesses to make the</p> <p>00:47:15 10 choice?</p> <p>00:47:18 11 A I'm saying that -- I can't really tell you what</p> <p>00:47:26 12 they were thinking at that time, but that was how it was</p> <p>00:47:34 13 laid out for me, in effect.</p> <p>00:47:35 14 Q That was the argument that you were to present</p> <p>00:47:39 15 against the ordinance, correct?</p> <p>00:47:41 16 MR. CREMIN: Object to the form of the question.</p> <p>00:47:43 17 Answer it, if you can.</p> <p>00:47:44 18 A Yes, sir.</p> <p>00:47:45 19 Q (BY MR. MIKHAIL) Okay. Did you discuss or did</p> <p>00:47:50 20 anyone from the Tobacco Institute, including Stan Boman,</p> <p>00:47:54 21 discuss with you any health issues relative to this</p> <p>00:47:59 22 ordinance?</p> <p>00:48:00 23 A No, sir.</p> <p>00:48:04 24 Q You said that this was how it was presented to</p> <p>00:48:07 25 you, that private businesses ought to make the choice as</p>

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00:48:11 1 opposed to it being imposed on them by government?  
00:48:15 2 A Yes, sir.  
00:48:18 3 Q Do you know, Mr. Matheson, why the issue of  
00:48:22 4 health was not discussed as it related to this ordinance?  
00:48:27 5 A No, sir.  
00:48:28 6 Q Did you bring it up to the Tobacco Institute  
00:48:31 7 representatives?  
00:48:31 8 A No, sir.  
00:48:32 9 Q The effect the ordinance would have on public  
00:48:35 10 health?  
00:48:36 11 A No, sir.  
00:48:36 12 Q Did they bring it up? When I say "they", I mean  
00:48:39 13 the Tobacco Institute or anyone representing them.  
00:48:41 14 A And I guess I have to tell you at this point, the  
00:48:43 15 Tobacco Institute to me was Stan Boman. He was the only  
00:48:47 16 person I knew, the only person I dealt with. And I,  
00:48:49 17 frankly, had no idea how big it was and really what it did.  
00:48:54 18 But, no, we never discussed those issues.  
00:48:58 19 Q Stan Boman was at the time, if I'm correct, and  
00:49:02 20 you correct me if I'm wrong, the regional director or  
00:49:05 21 regional -- I guess director is the best way to put it, of  
00:49:12 22 several states which included Oklahoma; isn't that right?  
00:49:14 23 A I really don't know. As I said, you know, to me,  
00:49:18 24 he was the Tobacco Institute as far as I knew. He's the  
00:49:21 25 only person I ever dealt with, had any contact with, other

00:50:24 1 A I don't have any of ours because our offices are  
00:50:27 2 at home and we run out of space and they sort of -- you  
00:50:31 3 know, we go on a last in -- whatever system it is, you  
00:50:40 4 know, as far as down the line, we ain't got room left in  
00:50:42 5 the filing cabinets or the boxes, it goes out.  
00:50:45 6 Q (BY MR. MIKHAIL) Okay. The request, the  
00:50:47 7 subpoena requested various documents from you. And just so  
00:50:51 8 the record will be clear, let me just read that request  
00:50:53 9 into the record. "All documents relating to your lobbying  
00:50:56 10 activities on behalf or for the benefit of or in any way  
00:51:01 11 relating to the tobacco industry or relating to tobacco in  
00:51:05 12 the state of Oklahoma between the dates of January 4th,  
00:51:09 13 1954 and August 22nd, 1996, with the exception of  
00:51:15 14 information about amounts of money you have been paid by  
00:51:17 15 your clients, your expense accounts, and any specific  
00:51:20 16 expenditures you have made in Oklahoma in connection with  
00:51:23 17 lobbying before the legislature or any state agency or  
00:51:26 18 regulatory body." Do you recall that request?  
00:51:28 19 A Yes, sir.  
00:51:29 20 Q Have you produced to us all the documents that  
00:51:32 21 will be responsive to this request?  
00:51:34 22 A Yes, sir.  
00:51:34 23 Q Okay.  
00:51:34 24 A I turned them over to Mr. Cremin, that is.  
00:51:42 25 Q I understand.

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00:49:24 1 than Ken Nance, that I ever had any contact with in the  
00:49:27 2 Tobacco Institute.  
00:49:28 3 Q Okay. Did you actually report to Stan Boman in  
00:49:32 4 the sense of giving him updates on what was going on and  
00:49:37 5 briefing him on the happenings?  
00:49:39 6 A Yes, sir.  
00:49:39 7 Q Okay. And did you ever communicate with him in  
00:49:41 8 writing?  
00:49:43 9 A Yes, sir.  
00:49:44 10 Q Did he ever communicate with you in writing?  
00:49:49 11 A To a limited extent. I don't recall exactly  
00:49:52 12 what, but I'm sure he sent me some materials and things,  
00:49:56 13 but I don't recall exactly what it was.  
00:49:58 14 Q Did you maintain files and keep records of the  
00:50:01 15 written communications that you submitted to Stan Boman?  
00:50:04 16 A At the time, yes, sir.  
00:50:05 17 Q When you received the notice of deposition  
00:50:10 18 subpoena in this case, did those records exist that dealt  
00:50:14 19 with Stan Boman?  
00:50:19 20 A No, sir, not in my office anyway.  
00:50:21 21 Q That's what I meant. Did you have them?  
00:50:22 22 A No, sir.  
00:50:23 23 Q Do you know what's happened to them?  
00:50:24 24 MR. CREMIN: His copies, you mean?  
00:50:24 25 MR. MIKHAIL: Yeah.

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00:51:43 1 A Okay.  
00:51:43 2 Q I understand.  
00:51:45 3 MR. CREMIN: How about this is an excellent time  
00:51:48 4 for a break?  
00:51:48 5 MR. MIKHAIL: That's fine.  
00:51:50 6 MS. POTTER: Off the record at 00:51:52.  
00:51:55 7 (A recess was had.)  
01:18:02 8 MS. POTTER: Back on the record at 01:18:09.  
01:18:14 9 Q (BY MR. MIKHAIL ) Mr. Matheson, did you need –  
01:18:16 10 okay.  
01:18:21 11 MR. CREMIN: Multi-talented legal pad.  
01:18:25 12 Q (BY MR. MIKHAIL ) What other than the work on  
01:18:26 13 this city ordinances -- was it in the City of Tulsa?  
01:18:28 14 A Yes, sir.  
01:18:29 15 Q Okay. Other than that assignment did you do for  
01:18:33 16 the Tobacco Institute?  
01:18:36 17 A During the 1987 legislative session, they asked  
01:18:42 18 me to -- and it was late in the session, I don't recall  
01:18:46 19 exactly when, maybe the last couple of months of the  
01:18:50 20 session, they asked me to work with Mr. Nance on some  
01:18:53 21 pending legislation.  
01:18:55 22 Q In the Oklahoma legislature?  
01:18:57 23 A Yes, sir.  
01:18:57 24 Q And what was that legislation?  
01:18:59 25 A That was what became known as the Smoking in

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1 Public Places Act.  
 2 Q Okay. And what did you do in conjunction with  
 3 Mr. Nance as it related to that act?  
 4 A We did one of the normal things, of course, which  
 5 is talking to the legislators about votes, but primarily,  
 6 we did some work on writing amendments for the legislation.  
 7 Q Okay. Let me back up, maybe make it a little  
 8 easier. When you were asked to do this work along with  
 9 Mr. Nance on the Smoking in Public Places Act -- actually,  
 10 it wasn't an act at the time.

11 A Right.  
 12 Q Was a bill -- had a bill already been introduced?  
 13 A Yes, sir.  
 14 Q Okay. Did you come on board on that project or  
 15 that assignment after the bill had been introduced?  
 16 A Yes, sir.  
 17 Q Okay. And had it been assigned to a committee?  
 18 A As I recall, I think the bill was -- it already  
 19 passed the House and had been in the Senate and committee  
 20 and I think it came out of committee in the Senate with  
 21 amendments. And through the normal process, that was  
 22 probably going to go to what's called a conference  
 23 committee. And so I believe it was close to that stage of  
 24 being going to a conference committee by the time I got  
 25 involved.

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1 Q Was this in the spring of '87?  
 2 A Yes, sir.  
 3 Q Okay. And what type of amendments were you  
 4 putting together or promoting to that bill?  
 5 MR. CREMIN: Object to the form of the question.  
 6 I'm not sure what putting together or promoting means.  
 7 MR. MIKHAIL: He said he worked on having  
 8 amendments made to the legislation.  
 9 Q (BY MR. MIKHAIL) Did I misunderstand you?  
 10 A No, sir.  
 11 Q Okay. And what type of amendments?  
 12 A At the time -- and you have to understand that  
 13 Ken Nance has a background in drafting legislation. He was  
 14 a -- before he became a legislator and an attorney, he  
 15 worked in the bill drafting session for the legislature  
 16 sometime in the '60s. And so he was trying to draft  
 17 language that was, I guess, acceptable to his client. And  
 18 I worked with him some on that, more -- in my case, I'm  
 19 sort of a dot the I's, cross the T's person, and so I would  
 20 sit with Ken and he would be kind of going through looking  
 21 at the legislation in the proposed bill or looking at the  
 22 language in the proposed bill and we would look at methods  
 23 of making some changes or suggesting changes to the  
 24 authors.  
 25 MR. MACLAREN: Object to his answer in so far as

he has testified with regard to Ken Nance's actions as  
 being nonresponsive to the question.  
 3 Q (BY MR. MIKHAIL) Mr. Matheson, I know you don't  
 4 have the piece of legislation in front of you so it might  
 5 be difficult, but just from your best recollection that you  
 6 can tell me, what did that bill provide for, generally?  
 7 And I say "that bill", the smoking in public -- which  
 8 became later the Smoking in Public Places Act.  
 9 MR. CREMIN: Counsel, you're talking about what  
 10 did it ultimately provide for or what did it provide for  
 11 when he first saw it?  
 12 Q (BY MR. MIKHAIL) When he was assigned to start  
 13 working to having amendments made to it, et cetera. When  
 14 you were asked to start working on that project, what did  
 15 that proposed bill provide for, what was it attempting to  
 16 do?  
 17 A I honestly do not remember what it really  
 18 proposed because by the time I, in effect, got my hands on  
 19 it or got involved in it, it was -- you know, there were  
 20 various proposals and various ideas going into it. All I  
 21 know is that it related to some prohibitions of smoking in  
 22 what are defined as public places. And I mean, I don't --  
 23 I just do not know exactly what it was because I had not  
 24 been in on it from the beginning.  
 25 Q You know what the term use restrictions means,

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1 don't you? Use restrictions?  
 2 A Use restrictions?  
 3 Q U-s-e, use. Are you familiar with that term?  
 4 A No, not really.  
 5 Q Okay. I'll represent to you that one of the  
 6 things that Tobacco Institute and other lobbyists have  
 7 discussed in other litigation is the tobacco industry,  
 8 including R.J. Reynolds and the Tobacco Institute, working  
 9 for use restrictions; in other words, legislation similar  
 10 to the one we're discussing now that puts limits on the use  
 11 of tobacco.  
 12 A Oh, okay.  
 13 Q Okay. Do you believe that the piece of  
 14 legislation that you're working on dealt with restrictions  
 15 on the use of tobacco in public places?  
 16 A Yes, sir.  
 17 Q Okay. And that is something that the industry  
 18 and your client has opposed, correct?  
 19 MR. STEWART: Objection. Which client? Are you  
 20 still talking about this '87 time period?  
 21 Q (BY MR. MIKHAIL) 1987 when you represented the  
 22 Tobacco Institute, the Tobacco Institute opposed  
 23 restrictions on the use of tobacco in public places, didn't  
 24 it?  
 25 A I think generally, yes. And that's difficult to

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<p>01:24:36 1 just say yes or no. I don't recall. Again, I was fairly      01:24:42 2 new with them. I hadn't done work in this area before. I      01:24:47 3 know that since I've worked for Reynolds, the general      01:24:52 4 position has been that we don't too much interfere with      01:24:57 5 what state government does in terms of when it wants to do      01:25:00 6 restrictions, but that we oppose placing restrictions on      01:25:07 7 private businesses in their use of it and how they can      01:25:12 8 operate their own businesses.</p> <p>01:25:14 9 Q So that applied both to the Tobacco Institute and      01:25:17 10 R.J. Reynolds?</p> <p>01:25:18 11 A I don't know if -- that's my point, I don't know      01:25:19 12 if it applied at that time with the Tobacco Institute. I      01:25:23 13 hadn't been told that. Like I say, I was -- I don't want      01:25:28 14 to say I was a babe in the woods, but I was -- I just      01:25:31 15 didn't know exactly what their policies were.</p> <p>01:25:33 16 Q Okay. Do you know what the Tobacco Institute's      01:25:36 17 objections were to the legislation that we're talking      01:25:40 18 about, the bill to put restrictions on tobacco use in      01:25:43 19 public places?</p> <p>01:25:44 20 MR. CREMIN: Does he know -- does he know now,      01:25:48 21 you mean did he know then?</p> <p>01:25:50 22 Q (BY MR. MIKHAIL) Did you know at the time what      01:25:51 23 the Tobacco Institute's objections was to those      01:25:54 24 restrictions on the use of tobacco in public places?</p> <p>01:25:57 25 A Really, only what I was told by Mr. Nance.</p>	<p>01:27:25 1 Q Okay. Was the issue of health discussed at all?      01:27:28 2 A No, sir.      01:27:28 3 Q The consequences of tobacco use or restricted      01:27:32 4 tobacco use?      01:27:33 5 A No, sir.      01:27:44 6 Q Are you familiar with Tobacco Institute      01:27:48 7 documents --      01:27:50 8 A Some.      01:27:51 9 Q Well, let me finish my question.      01:27:52 10 A I'm sorry. I'm sorry.      01:27:54 11 Q Are you familiar with Tobacco Institute documents      01:28:00 12 that describe how in attempting to influence legislation      01:28:06 13 that the discussion of the issue of health was a loser and      01:28:09 14 that the industry, including the Tobacco Institute, needed      01:28:12 15 to shift focus and use as its argument issues such as      01:28:16 16 freedom, such as tax burdens, such as big brother      01:28:20 17 government coming down on us? Are you familiar with any      01:28:22 18 documents describing the need to shift away from a health      01:28:26 19 argument to a freedom of choice, big brother argument?</p> <p>01:28:29 20 MR. RIGGS: I object to the form.</p> <p>01:28:30 21 Q (BY MR. MIKHAIL) Are you familiar with documents      01:28:33 22 to that effect?</p> <p>01:28:33 23 A No, sir, not specifically as you have described      01:28:35 24 it.</p> <p>01:28:36 25 Q Okay. Any other work for the Tobacco Institute</p>
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<p>01:26:59 1 Q And what did Mr. Nance tell you?</p> <p>01:26:02 2 A That they didn't want to see legislation that      01:26:06 3 would restrict private businesses in the way they allowed      01:26:16 4 or didn't allow the use of tobacco on their premises.</p> <p>01:26:19 5 Q Isn't it true, Mr. Matheson, that if there is      01:26:22 6 less use or restricted use of tobacco, there would be less      01:26:28 7 sales of tobacco products?</p> <p>01:26:32 8 A I have no way of knowing that, really.</p> <p>01:26:34 9 Q Well, do you think that the Tobacco Institute, at      01:26:37 10 the time that you represented it, was simply concerned      01:26:42 11 about the notion of freedom of choice for businesses or was      01:26:45 12 it also concerned about its profits and the restrictions on      01:26:52 13 the use of their product?</p> <p>01:26:53 14 MR. CREMIN: I'll object to the form of that      01:26:56 15 question.</p> <p>01:26:56 16 Q (BY MR. MIKHAIL) Do you understand it, Mr.      01:26:57 17 Matheson?</p> <p>01:26:58 18 A I understand the question.</p> <p>01:26:59 19 Q Could you answer it, please?</p> <p>01:27:00 20 A But I don't have any specific knowledge.</p> <p>01:27:02 21 Q From what was represented to you by Mr. Nance,      01:27:10 22 was there any other reason given you about Tobacco      01:27:16 23 Institute's objections to that piece of legislation other      01:27:20 24 than the issue of choice?</p> <p>01:27:23 25 A No, sir, not that I recall at all.</p>	<p>01:28:41 1 at the time, in the '87 session?</p> <p>01:28:44 2 A No. When the session ended, my employment with      01:28:47 3 the Tobacco Institute ended.</p> <p>01:28:48 4 Q Okay. What was the outcome of the work on that      01:28:53 5 bill?</p> <p>01:28:53 6 A The bill passed, became law.</p> <p>01:28:57 7 Q Okay. What changes did you and Mr. Nance try to      01:29:07 8 have made to the bill?</p> <p>01:29:12 9 A I'm going to have to think a minute to really get      01:29:15 10 it down right. I think one of the major changes was to      01:29:23 11 make sure that restrictions didn't apply to private      01:29:28 12 businesses. There were some specific exemptions for bars,      01:29:37 13 clubs, bowling alleys, prisons, jails. At that time we had      01:29:45 14 a new racetrack in Oklahoma, a parimutual betting track; it      01:29:52 15 didn't apply to them. And I don't know whether that was      01:29:55 16 something that we had tried to do or if that industry was      01:30:00 17 involved in it in some way, I just don't know, but I know      01:30:03 18 that ended up in the bill. There was already current law      01:30:11 19 that prohibited smoking in elevators, museums, indoor      01:30:20 20 circuses, things of that nature. That had been passed in      01:30:26 21 1976, I think.</p> <p>01:30:32 22 So -- we also, I think, worked to keep what we      01:30:36 23 consider reasonable fines in it, in which I think the      01:30:41 24 maximum was \$100 for a violation of the act. And that that      01:30:48 25 would be -- and I don't know whether this was in the</p>

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1 original legislation or not because I didn't -- wasn't  
 2 involved in it at that time, that was enforced by the  
 3 Oklahoma State Department of Health.

4 Q Were the changes that you worked to achieve on  
 5 behalf of the Tobacco Institute, along with Ken Nance, deal  
 6 with the extent of the restrictions on use and the fines  
 7 for violations of the law?

8 A What do you mean by the -- I'm sorry, by the  
 9 extent?

10 Q In other words, you tried to get certain changes  
 11 or modifications made as the bill was going through its  
 12 process in the legislature, and was one of those attempting  
 13 to have less restrictions on tobacco use?

14 A Yes, sir.

15 Q Okay. And also, you attempted to make sure that  
 16 any penalties for violations of the law would be less than  
 17 had been proposed?

18 A I don't know that they were less than what had  
 19 been proposed because I don't know what had been proposed.

20 Q Well, from your recollection, were you trying to  
 21 get the fines increased, the penalties increased?

22 A No, of course not.

23 Q Okay. So were you trying to get them to stay the  
 24 same?

25 A If that's what they were in the original. See,

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1 that's the problem. If it was \$100 in the original bill,  
 2 that's what stayed in there. I know -- that's all I know.  
 3 I don't know whether it had been higher than that or not.

4 Q Okay. What -- if you know, what was the reason  
 5 that the Tobacco Institute wanted fines to be reasonable,  
 6 as you say?

7 A Well, just for that. I think that they didn't  
 8 want to see any onerous restrictions or -- I'm sorry, fines  
 9 that, you know, \$1,000 or whatever for lighting up in a  
 10 restaurant, or whatever, wherever it's prohibited.

11 Q Why did the Tobacco Institute care if the fines  
 12 were \$1,000 or \$10,000?

13 MR. STEWART: Objection to the form.

14 Q (BY MR. MIKHAIL) If you know?

15 A I really don't.

16 Q Isn't it reasonable to conclude, Mr. Matheson,  
 17 that if the fines were high that it would be a deterrent to  
 18 use of tobacco products?

19 MR. STEWART: Objection to the form.

20 MR. CREMIN: Object to the form of the question.

21 Q (BY MR. MIKHAIL) You may answer.

22 A I think that's probably true.

23 Q Okay. And then there would be less profit for  
 24 the industry, correct?

25 MR. STEWART: Same objection.

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01:33:10 1 MR. CREMIN: Object as to form of the argument.

01:33:13 2 MR. MIKHAIL: Use this on cross examination.

01:33:14 3 Your objection will be noted for the record.

01:33:17 4 MR. CREMIN: All right.

01:33:17 5 A At that time, and really today, I don't know

01:33:19 6 anything about how the profit structure is. And as I

01:33:22 7 understand it, the Tobacco Institute is a trade

01:33:25 8 association, they don't have any profits.

01:33:26 9 Q (BY MR. MIKHAIL) Okay. But it is reasonable to

01:33:29 10 conclude, isn't it, Mr. Matheson, that if there's less use

01:33:31 11 of tobacco products, there would be less profit for the

01:33:37 12 manufacturers of tobacco, correct?

01:33:39 13 MR. STEWART: Objection to form.

01:33:40 14 A You have a tendency to raise the prices when that  
 01:33:44 15 happens.

01:33:44 16 Q (BY MR. MIKHAIL) But isn't that true, though?

01:33:45 17 A It's a reasonable argument, and I don't -- you  
 01:33:52 18 know, I don't have any idea to know whether it's true or

01:33:55 19 not because in Oklahoma, we have a lot of Indian smoke

01:33:58 20 shops and so the same products might be sold but the state  
 01:34:05 21 wouldn't get the benefit of the tax revenue.

01:34:06 22 Q But the tobacco manufacturers, as business, they  
 01:34:13 23 were concerned about their profits, correct?

01:34:14 24 A I'm certain they were, yes, sir.

01:34:16 25 Q And they wanted their profits to be more as

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01:34:18 1 opposed to less, correct?

01:34:19 2 A Most businesses do, yes, sir.

01:34:21 3 Q And their profits won't be more if there was less

01:34:25 4 use of their product, correct?

01:34:28 5 MR. STEWART: Objection to the form.

01:34:28 6 A I would think that's correct.

01:34:30 7 Q (BY MR. MIKHAIL) Okay. Any other projects with  
 01:34:32 8 TI?

01:34:33 9 A No, sir.

01:34:35 10 Q What was the outcome -- well, let me ask you

01:34:35 11 this: In your assessment, did you accomplish for the  
 01:34:40 12 Tobacco Institute, along with Ken Nance, what you set out

01:34:43 13 to accomplish on the proposed smoking in public places law?

01:34:47 14 A At the time, as I recall, the Tobacco Institute  
 01:34:52 15 didn't like what was the final result at that time. Since

01:34:58 16 then, they have concluded that it was -- that they like it.

01:35:03 17 Q Okay. What happened, do you know, that made them  
 01:35:06 18 change their mind?

01:35:07 19 A I think the subject of preemption, in that they  
 01:35:16 20 liked that, they ended up liking that concept.

01:35:19 21 Q Preemption was a part of the proposed bill; was  
 01:35:21 22 it not?

01:35:23 23 A It was not a part of the proposed bill. It was a  
 01:35:25 24 part of the final bill.

01:35:27 25 Q Okay. Was preemption in the final bill something

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01:35:30 1 that the Tobacco Institute wanted to see in the final bill?	01:37:47 1 commissioners suggesting or attempting to have them either
01:35:37 2 A At the time, no, sir.	01:37:55 2 vote against it or not pass the ordinance?
01:35:38 3 Q Okay. Do you know if anyone from the tobacco	01:37:57 3 A Yes, sir.
01:35:40 4 industry, and I say tobacco manufacturers, not the Tobacco	01:37:58 4 Q How many of them?
01:35:43 5 Institute, worked to have -- to your knowledge, worked to	01:38:01 5 A I personally am going to try to recall this. I'm
01:35:46 6 have preemption put into the final bill?	01:38:06 6 remembering because a couple of them have passed away now.
01:35:50 7 A I had no contact with any of those people at that	01:38:09 7 I'm trying to remember. I know I talked to staff people
01:35:52 8 time, so --	01:38:15 8 for at least one commissioner who was then finance
01:35:53 9 Q Okay. On that -- I'm sorry, did you finish your	01:38:19 9 commissioner, Ray Gardner. I talked to one of his staff
01:35:56 10 answer?	01:38:25 10 people, but I did not talk to him. I did talk specifically
01:35:56 11 A Yes, I did.	01:38:28 11 to, I think, Mr. Metcalf and his assistant, and with -- I'm
01:35:57 12 Q On that proposed legislation dealing with smoking	01:38:43 12 trying to think. Houston, I can't remember if that's his
01:35:59 13 in public places, did you work -- other than with Ken Nance	01:38:46 13 first name or his last name.
01:36:02 14 for TI, did you work with lobbyists for any tobacco	01:38:49 14 Q You don't have to remember all the names.
01:36:06 15 manufacturers?	01:38:51 15 MR. CREMIN: Houston Adams.
01:36:06 16 A No, sir.	01:38:53 16 A Okay. I specifically talked to him. I talked to
01:36:07 17 Q Were there lobbyists for the tobacco	01:38:58 17 an aide to the mayor but not to the mayor directly.
01:36:10 18 manufacturers working on making changes or amendments or	01:39:01 18 Q (BY MR. MIKHAIL) Okay. You had mentioned
01:36:14 19 modifications to that bill?	01:39:02 19 earlier that you had talked to some business people that
01:36:15 20 A I didn't -- I didn't have any contact with them,	01:39:09 20 shared or had similar views as to the ordinance and you
01:36:19 21 if they were.	01:39:12 21 encouraged them to speak up or attend the meetings and give
01:36:19 22 Q But do you know if they were?	01:39:15 22 their view; isn't that correct?
01:36:21 23 A And I don't know.	01:39:16 23 MR. CREMIN: Object to the form of the question.
01:36:22 24 Q Okay. What about did you work with lobbyists for	01:39:17 24 I think that's the reverse of what he testified to. I
01:36:26 25 other organizations that had similar views as the Tobacco	01:39:19 25 think he testified to he didn't talk to any of them, he
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01:36:33 1 Institute? And what I'm talking about, did you work, for	01:39:22 1 just sent notices to them and didn't know what their views
01:36:37 2 instance, with the restaurant association?	01:39:26 2 were is what his testimony was and not as you just
01:36:39 3 A No, sir. My sole contact throughout that whole	01:39:29 3 represented it.
01:36:43 4 thing was with Ken Nance.	01:39:29 4 Q (BY MR. MIKHAIL) Did you talk to -- personally
01:36:44 5 Q Okay. So you did not work with lobbyists or	01:39:31 5 talk to various business people and ask them to present
01:36:48 6 representatives --	01:39:36 6 their views?
01:36:49 7 A No, sir.	01:39:37 7 A I sent mail to them asking them to come to
01:36:49 8 Q -- of other interest groups?	01:39:40 8 meetings and things.
01:36:51 9 A No, sir, not that I recall at all.	01:39:41 9 Q Okay. You didn't talk to them personally?
01:36:52 10 Q Okay. Let's go back to the ordinance in Tulsa,	01:39:43 10 A The only business person I talked to personally
01:36:55 11 the proposed ordinance in Tulsa. What was the outcome of	01:39:46 11 that I can recall on that was a restaurant owner who also
01:36:59 12 that?	01:39:50 12 happened to be a member of the City/County Health
01:36:59 13 A It just kind of went away. Like I said, at that	01:39:52 13 Department, City/County Health board.
01:37:04 14 time, we had a commission form of government. There were,	01:39:56 14 Q Okay. Mr. Matheson, are you telling me that you
01:37:07 15 I believe, five commissioners and a mayor. The -- you've	01:39:58 15 didn't know what their view was going to be when you gave
01:37:18 16 got six people voting and then there were, you know, a	01:40:01 16 them notice of the public meeting?
01:37:21 17 couple, maybe one or more of them, maybe two of the	01:40:04 17 A I didn't know. I was -- I guess I had hopes that
01:37:27 18 commissioners that sort of had some interest in it and just	01:40:10 18 their views would be similar to mine and my client's.
01:37:30 19 really wasn't a lot of -- didn't seem to be a lot of	01:40:13 19 Q Okay. At the time that you were working as it
01:37:32 20 interest on the commission in it at that time. They also,	01:40:19 20 relates to this ordinance, were there any public health
01:37:36 21 as I recall, said, well, there's state legislation pending,	01:40:23 21 officials, either local or -- when I say local, meaning
01:37:40 22 let's see what happens to that.	01:40:23 22 city or county or state, working to promote the passage of
01:37:41 23 Q So no ordinance was passed in Tulsa?	01:40:33 23 the ordinance in Tulsa?
01:37:44 24 A No, sir.	01:40:34 24 A Members of the City/County Health Department,
01:37:44 25 Q And did you have contact with any of the	01:40:41 25 their board. They have a director, who was at that time a

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1 medical doctor. And there were doctors and attorneys and  
 2 restaurant owners on the board, so, yes, I -- in the sense  
 3 that the City/County Health Department was doing that,  
 4 there were, I guess, medical people, was that the question?

5 Q Public health officials were working to promote  
 6 the passage of use restrictions, and you were working on  
 7 behalf of your client to have less use restrictions,  
 8 correct?

9 A Yes, sir.

10 Q So you were at odds with the public health  
 11 officials?

12 A Yes, sir.

13 Q All right. Were there any voluntary health  
 14 groups, such as the American Cancer Society, the heart  
 15 association, lung association, you name it, working, to the  
 16 best of your recollection, in conjunction with or alongside  
 17 the public health officials to promote the ordinance?

18 A I never had any contact, if they were, or was  
 19 aware of any. There was one private doctor that I know, a  
 20 dentist, actually, who was working on it.

21 Q Okay. But you don't know if officially the  
 22 American Cancer Society or the heart association --

23 A No, sir. No, sir.

24 Q Okay. What about the smoking in public places  
 25 law, did public health officials work to have the bill

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1 passed with restrictions greater than what the Tobacco  
 2 Institute wanted?

3 A If they did at the time, I was not aware of it.

4 Q You don't recall?

5 A I don't -- I don't remember why, I just was not  
 6 aware of it.

7 Q You weren't aware of it at the time, if they  
 8 did. What about voluntary health groups at the time?

9 A Same thing, if there were -- if there were  
 10 people doing it, I was not aware of it.

11 Q Okay. And you said Stan Boman was the only  
 12 person other than -- you worked with Ken Nance, but Stan  
 13 Boman was the only other TI person that you dealt with?

14 A Yes, sir. I met some at a meeting in Denver one  
 15 time, but that's it.

16 Q Okay. All right. Then if I understand the  
 17 chronology of this, then you later that year became a  
 18 contract lobbyist for R.J. Reynolds, correct?

19 A Well, I guess to state it really accurately, I  
 20 became an hourly employee in a sense working on issues  
 21 related to the new cigarette product, and I did not during  
 22 that period of time, from whenever it was, September or  
 23 early October of 1987, I did not do any specific lobbying  
 24 until the following year.

25 Q Okay. So the lobbying began in early '88?

01:43:22 1 A Yes, sir.  
 01:43:22 2 Q Okay. And do you recall what major -- what main  
 01:43:23 3 assignments you had in the 1988 session? And that was when  
 01:43:35 4 you first came on. I thought maybe you could remember.  
 01:43:38 5 A Yeah, and I -- this has been 10 years ago, I  
 01:43:41 6 guess. I don't recall -- I mean, if I was shown a piece of  
 01:43:44 7 legislation or something dating to that time, I might  
 01:43:51 8 recognize it, but I don't recall a specific piece of  
 01:43:54 9 legislation at that time.

01:43:55 10 Q Okay. Did you -- were you already a full-time  
 01:43:57 11 lobbyist?

01:43:57 12 A Yes, sir.

01:43:57 13 Q Okay. In early 1988?

01:43:59 14 A Yes, sir.

01:43:59 15 Q Okay. And who did you report to, if anyone, at  
 01:44:05 16 R.J. Reynolds?

01:44:06 17 A At that time, I reported directly to Joe Murray,  
 01:44:13 18 III.

01:44:14 19 Q Do you remember what Joe Murray's position was at  
 01:44:16 20 RJR?

01:44:17 21 A Regional director for government relations, I  
 01:44:21 22 believe is how they titled it.

01:44:22 23 Q Okay. And Mr. Murray was, to the best of your  
 01:44:25 24 knowledge, an actual employee of RJR, correct?

01:44:25 25 A Yes, sir.

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01:44:26 1 Q Okay. But you were a contract lobbyist?

01:44:30 2 A Yes, sir.

01:44:31 3 Q You were not paid a salary?

01:44:32 4 A No, sir, nor benefits.

01:44:35 5 MR. MIKHAIL: Kelly, can you take care of that.

01:44:41 6 Q (BY MR. MIKHAIL) Did you communicate with anyone  
 01:44:43 7 other than Joe Murray on a regular basis with RJR?

01:44:47 8 A No, sir, not on a regular basis.

01:44:49 9 Q Okay. And what did the communication consist of  
 01:44:51 10 primarily, were you reporting to him what was happening in  
 01:44:55 11 the legislature?

01:44:56 12 A Yes, sir.

01:44:57 13 Q Were you reporting to him what your activities  
 01:44:59 14 were in the legislature?

01:45:01 15 A Yes, sir.

01:45:03 16 Q In the 10 years or so that you have been a  
 01:45:14 17 lobbyist for R.J. Reynolds, did you work in conjunction  
 01:45:21 18 with other groups in Oklahoma that had overlapping  
 01:45:30 19 interests with RJR such as the grocer's association or the  
 01:45:35 20 retail association or the wholesaler's association or the  
 01:45:39 21 restaurant association?

01:45:41 22 A Well, I need to break some of those out because  
 01:45:44 23 wholesalers or retailers, no; restaurant association,  
 01:45:49 24 grocer's association, yes.

01:45:50 25 Q What about the Petroleum Marketer's Association?

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01:45:53	1	A Yes.	01:48:21 1 A I don't have -- I know that there was contact
01:45:54	2	Q Did you work with any local or statewide smokers'	01:48:25 2 between the restaurant association and the people in
01:45:57	3	rights groups?	01:48:28 3 Winston-Salem, and I think I may have had some contact with
01:45:59	4	A Not directly. I had some phone calls and	01:48:33 4 the people at Reynolds. Primarily what occurred, as I
01:46:05	5	contacts from a -- one group; actually, one person with one	01:48:37 5 understand it, is that they became associate members of
01:46:10	6	group who would call me and ask me about pending	01:48:41 6 either the restaurant association or maybe the grocer's
01:46:14	7	legislation, but it was not my job to work directly with	01:48:45 7 association and either contributed or paid dues of a
01:46:17	8	those people.	01:48:52 8 certain amount to assist them, yes, sir.
01:46:17	9	Q Okay. But when a piece of legislation was of	01:48:56 9 Q Okay. Mr. Matheson, how were decisions made when
01:46:24	10	interest to R.J. Reynolds and the interest of other groups,	01:49:01 10 you -- in your work as R.J. Reynolds in the time period
01:46:34	11	such as the restaurant association or the Petroleum	01:49:06 11 that you worked as a lobbyist, how were decisions made for
01:46:36	12	Marketer's Association coincided with R.J. Reynolds, did	01:49:11 12 you to either oppose or promote legislation? In other
01:46:42	13	you have communication with representatives of those	01:49:15 13 words, did it come from R.J. Reynolds to you or did you
01:46:44	14	organizations?	01:49:19 14 alert R.J. Reynolds about something that was going on that
01:46:45	15	A Yes, sir. And, really, in -- probably not until	01:49:22 15 you had a sense that they would be interested in? How did
01:46:51	16	sometime in the '90s did that kind of all come together. I	01:49:25 16 that work?
01:46:55	17	don't recall in the beginning, first two or three years of	01:49:28 17 A Well, my job for Reynolds as a, what's called a
01:47:00	18	having any dealings with those people, but after that, yes.	01:49:32 18 proactive lobbyist, is to track any and all legislation
01:47:03	19	Q Okay. After -- can you tell me approximately	01:49:36 19 which may affect them, and that might be something in --
01:47:04	20	when?	01:49:41 20 could be something in tort reform, advertising, smoking
01:47:05	21	A Sometime in '91 or so. I mean, I'm not saying	01:49:44 21 restrictions, other types of restrictions. So it was my
01:47:06	22	there wasn't any contact before that, that's what I recall.	01:49:50 22 job to let them know what was happening in the Oklahoma
01:47:10	23	Q And since 1991 -- approximately 1991, you have	01:49:53 23 legislature, so when legislation comes up that I think
01:47:14	24	had regular contact with representatives of those groups	01:49:56 24 might have some impact on them, then I would either call
01:47:17	25	who have had overlapping interests as R.J. Reynolds?	01:50:01 25 them -- call directly or send a memo about that legislation
		Page 50	Page 52
01:47:21	1	MR. CREMIN: Object to the form of the question.	01:50:10 1 and maybe a copy of the legislation, if I had it at that
01:47:22	2	MR. STEWART: And also object to the time	01:50:13 2 time.
01:47:24	3	period. I assume your questions aren't going beyond August	01:50:13 3 Q Okay. And they would then either let you know
01:47:26	4	of '96?	01:50:15 4 whether they wanted you to do anything vis-a-vis that --
01:47:28	5	MR. MIKHAIL: That's correct. That's the	01:50:20 5 A Generally, yes. Yes, sir.
01:47:29	6	cutoff.	01:50:22 6 Q Okay. As a lobbyist for R.J. Reynolds, did you
01:47:30	7	MR. STEWART: That's what's allowed, but I just	01:50:26 7 ever work in arranging for contributions to be made by R.J.
01:47:34	8	wanted to make that clear.	01:50:30 8 Reynolds to various legislators, campaign contributions?
01:47:35	9	MR. MIKHAIL: That's fine.	01:50:34 9 A Campaign contributions, yes, sir.
01:47:35	10	THE WITNESS: I'd kind of like to ask you what	01:50:38 10 Q Was that pretty much on a regular basis?
01:47:37	11	you mean by regular.	01:50:41 11 A It was really every two years.
01:47:37	12	Q (BY MR. MIKHAIL) Let me ask it this way. If the	01:50:43 12 Q When elections --
01:47:41	13	restaurant association perceives its interest to be similar	01:50:44 13 A When it was election time, yes, I did do that,
01:47:45	14	to that or coinciding with R.J. Reynolds, then when you	01:50:48 14 yes, sir.
01:47:50	15	were working to either pass or defeat legislation, if they	01:50:49 15 Q And what did you do, Mr. Matheson, did you
01:47:54	16	had a similar view during these years that you were a	01:50:50 16 contact Joe Murray or anyone else at R.J. Reynolds and say,
01:47:57	17	lobbyist for R.J. Reynolds, you worked along with them to	01:50:53 17 representative so and so or senator so and so needs our
01:47:59	18	make sure that -- and coordinated your efforts, correct?	01:50:55 18 help or he or she is someone that we need to support?
01:48:03	19	A In the latter -- yeah, in the last, let's say,	01:50:59 19 A Generally, what would occur, and we're talking
01:48:06	20	seven or eight years, yes, sir.	01:51:03 20 about what I consider limited amounts of money, I would
01:48:08	21	Q All right. And R.J. Reynolds also made financial	01:51:10 21 submit to -- and originally Joe Murray was the regional
01:48:10	22	contributions to assist those groups in their lobbying	01:51:17 22 director and there have been three different ones over the
01:48:14	23	efforts for positions that RJR favored or opposed in the	01:51:22 23 years since then, I believe, as I recall, I would submit a
01:48:19	24	legislature, correct?	01:51:24 24 list of names from the Senate and the House and suggested
01:48:20	25	MR. STEWART: Object to the form.	01:51:31 25 contribution amounts and then they would go through that

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1 and look at the budget and determine whether or not, you  
 2 know, they could do it or not or would do it.  
 3 Q Okay. And what was the reason you would be  
 4 asking for certain contributions for certain  
 5 representatives or candidates and not others?  
 6 A And not others?  
 7 Q Right.  
 8 A I think the same as with other clients I have, is  
 9 that you don't support people who are — whose actions or  
 10 beliefs, or whatever, are inimical to your interests. You  
 11 try to support people who you believe will at least listen  
 12 to your arguments and who will give you kind of an open and  
 13 fair consideration of your arguments.  
 14 Q All right. Isn't it true, Mr. Matheson, that you  
 15 arranged or suggested that contributions be made by R.J.  
 16 Reynolds to candidates or representatives who are running  
 17 for re-election who favored less use restrictions as  
 18 opposed to more on the use of tobacco products?  
 19 A I don't know that I ever looked at it directly  
 20 that way.  
 21 Q The reason I ask you is you said more in their  
 22 interests, and I want to know what their interests are.  
 23 Less use restrictions is one, correct?  
 24 A Taxes and a number of things, yes.  
 25 Q Less taxes on cigarettes?

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1 A Well, not less, no increases. You hardly ever --  
 2 taxes never go away once they're on.  
 3 Q Okay. They never go down. No increases on  
 4 excise taxes?  
 5 A Yes, sir.  
 6 Q Okay. That's one interest?  
 7 A Yes, sir.  
 8 Q Tort reform is another interest?  
 9 A Yeah. And it's been fairly limited, frankly,  
 10 from my perspective because tort is such an arcane area, I  
 11 think, at least to me. It's a mystery. And I've never  
 12 worked directly on it. I did provide information to the  
 13 people at Reynolds which, I don't know what they did with  
 14 it, I assume went off to the lawyers or something, but when  
 15 tort reform type bills were passing or were in process, I  
 16 only remember one specific time that I gave them quite a  
 17 bit of information.  
 18 Q Okay. What about on legislators or candidates  
 19 who had a position one way or the other on protective  
 20 orders by courts in litigation involving allegations of  
 21 hazards of a product, a manufacturer's product, did you  
 22 ever take that into consideration in making a  
 23 recommendation for contributions?  
 24 A No, sir.  
 25 Q Okay. In your years as an RJR lobbyist, did you

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01:54:30 1 ever work on behalf of RJR to defeat any proposal?  
 01:54:38 2 MR. CREMIN: I think they're going to land right  
 01:54:39 3 out in front here.  
 01:54:40 4 THE WITNESS: System skip.  
 01:54:45 5 Q (BY MR. MIKHAIL) To defeat proposed legislation  
 01:54:48 6 in the Oklahoma legislature to prohibit courts from sealing  
 01:54:53 7 or making -- or keeping confidential records in litigation  
 01:54:58 8 that involve a public hazard of a product?  
 01:55:01 9 A No, sir.  
 01:55:01 10 Q Okay. I saw some documents to that effect from  
 01:55:03 11 the documents produced by the defendants as legislation of  
 01:55:08 12 concern to them. I'm asking you, from your work and your  
 01:55:12 13 experience with R.J. Reynolds, you don't recall any  
 01:55:14 14 specific instance when you worked to defeat such proposed  
 01:55:19 15 legislation?  
 01:55:20 16 A No, sir.  
 01:55:20 17 Q Okay. You also, as a lobbyist for R.J. Reynolds,  
 01:55:27 18 or have you over the years, worked to arrange sponsorships  
 01:55:31 19 for various events such as barbecues and fish fries and  
 01:55:37 20 that sort of thing for legislators?  
 01:55:40 21 A More golf tournaments than anything else.  
 01:55:42 22 Q I guess the fish fries are Mississippi more so.  
 01:55:45 23 MR. CREMIN: We do those.  
 01:55:46 24 A Well, we do those, and I have in the past  
 01:55:49 25 arranged to help sponsor a tobacco industry -- for a couple

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01:55:54 1 of three years, we did a tobacco industry barbecue, but we  
 01:56:00 2 no longer do that because of changes in the ethics laws  
 01:56:04 3 makes it impossible for us to figure out how much is spent  
 01:56:07 4 on each individual, so we don't do them any more.  
 01:56:11 5 Q Okay. Golf tournaments?  
 01:56:12 6 A Golf tournaments.  
 01:56:13 7 Q Tennis tournaments?  
 01:56:14 8 A No, no.  
 01:56:16 9 Q Golf tournaments?  
 01:56:18 10 A Mostly golf tournaments, and there's half a dozen  
 01:56:20 11 of those a year. I don't always have them participate,  
 01:56:23 12 but --  
 01:56:23 13 Q Have you as a lobbyist for R.J. Reynolds over the  
 01:56:26 14 years arranged for or facilitated witnesses to appear,  
 01:56:32 15 expert witnesses -- strike that. Expert witnesses to  
 01:56:35 16 appear before legislative committees considering  
 01:56:39 17 legislation affecting your client?  
 01:56:43 18 A No, sir, I don't think so. I'm trying to recall  
 01:56:46 19 an incident, maybe sometime in -- you know, in late '80s,  
 01:56:53 20 early '90s, where somebody did come in, but I don't recall  
 01:56:57 21 being involved in getting that person there.  
 01:56:58 22 Q Okay. What about as to dealing with indoor air,  
 01:57:01 23 clean air legislation, did you arrange for R.J. Reynolds to  
 01:57:07 24 have expert witnesses appear before legislative committees  
 01:57:11 25 considering such legislation dealing with the quality of

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01:57:14 1 indoor air? 01:57:15 2 A No, sir. 01:57:20 3 Q Have you heard of an organization called APCO? 01:57:23 4 A No, sir. 01:57:29 5 Q Have you heard of the name of a gentleman by the 01:57:43 6 name of Neil Cohen? 01:57:46 7 A No, sir, I don't think so. 01:57:55 8 Q Have you worked as a lobbyist with R.J. Reynolds 01:57:58 9 in conjunction with representatives of the Vending Machine 01:58:03 10 Operators Association or vending machine concerns? 01:58:07 11 A Only in the sense that I believe one or more 01:58:13 12 tobacco lobbyists do some work for vending machine 01:58:17 13 companies, but I have never worked on vending issues for -- 01:58:22 14 that would be considered working for the vending machine 01:58:25 15 companies or helping the vending machine companies. 01:58:27 16 Q Okay. But do you recall any legislation that 01:58:31 17 related to vending machine sale of cigarettes through 01:58:34 18 vending machines that you, as a lobbyist for RJR, worked in 01:58:38 19 conjunction with representatives of or lobbyists for the 01:58:41 20 vending association? 01:58:41 21 A I have never, to my knowledge, worked with 01:58:46 22 vending machine company lobbyists on behalf of vending 01:58:53 23 machines. Now, you know, I can say that in a specific act 01:58:58 24 there was in discussion of vending machines, but I never 01:59:01 25 worked with vending machine companies.	02:01:15 1 tobacco use or the addictive nature of nicotine? 02:01:20 2 MR. STEWART: Object to the form. Go ahead. 02:01:21 3 A You're talking about one on one, you mean? 02:01:23 4 Q (BY MR. MIKHAIL) Or to a group of legislators, 02:01:27 5 when you were dealing with them on legislation, whether to 02:01:29 6 pass it or defeat it. 02:01:30 7 A Go back again. Tell me again. There were two or 02:01:33 8 three items there and I'd like to -- 02:01:35 9 Q Okay. In -- over the 10 years or so that you 02:01:38 10 represented R.J. Reynolds, can you think of an instance 02:01:40 11 when you communicated to a legislator or group of 02:01:43 12 legislators information from R.J. Reynolds on the harmful 02:01:46 13 effects of tobacco use or the addictive nature of 02:01:51 14 nicotine? 02:01:55 15 MR. STEWART: Same objection. 02:01:54 16 A Never to my knowledge on the addictive nature, 02:01:57 17 what you call the addictive nature of nicotine, and that 02:02:02 18 one instance I mentioned just a couple of minutes ago when 02:02:05 19 I gave a packet to probably 25 or 30 legislators on, you 02:02:08 20 know, various newspaper items and a card from Reynolds that 02:02:11 21 may have discussed something related to health, but it -- 02:02:14 22 other than that, I don't recall any other instance. 02:02:23 23 Q (BY MR. MIKHAIL) Okay. Do you -- 02:02:24 24 MR. CREMIN: Counsel, just for my understanding, 02:02:25 25 and I'm not in this litigation for the long haul like you
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01:59:03 1 Q Okay. Mr. Matheson, when you, over the last 10 01:59:13 2 or so years that you have worked as a lobbyist for R.J. 01:59:16 3 Reynolds, communicate with a legislator about legislation 01:59:26 4 that deals with use restrictions or taxes or any other 01:59:32 5 subject that affects your client, have you communicated to 01:59:39 6 the legislators any information about the health 01:59:45 7 consequences of the product that your client produces and 01:59:50 8 sells in Oklahoma? 01:59:52 9 A That would not be something I would normally do. 01:59:55 10 I do recall sometime in the last five or six years I put 02:00:02 11 together a set of four or five different things, including 02:00:10 12 an article from a Detroit newspaper, something from a 02:00:13 13 business type publication relating to the economics of 02:00:20 14 environmental tobacco smoke, ETS, secondhand smoke, 02:00:24 15 whatever, various names for it. And I -- and there were 02:00:30 16 about four or five pieces, including a card from -- that 02:00:36 17 R.J. Reynolds had produced that was, in my view, was a 02:00:41 18 recitation of the EPA's position on secondhand smoke. I 02:00:46 19 didn't view it as, quote, health related, but there may 02:00:51 20 have been some references to health in it. 02:00:54 21 Q Okay. Do you recall any instances when you 02:00:59 22 communicated to a legislator, as you were dealing with that 02:01:03 23 legislator on some pending legislation that affected 02:01:08 24 tobacco, do you recall presenting information on behalf of 02:01:12 25 your client to that legislator about the harmful effects of	02:02:23 1 guys were, but I thought you had earlier said this all ends 02:02:33 2 August of '96, and so when you say ten years, it would 02:02:37 3 actually only be about seven years and ten months, it 02:02:39 4 sounds like to me. 02:02:40 5 MR. MIKHAIL: I apologize, let's just say the 02:02:46 6 period -- 02:02:48 7 MR. CREMIN: Not to be technical or anything. 02:02:49 8 MR. MIKHAIL: That's what the Court order 02:02:51 9 provides, so -- 02:02:54 10 MR. CREMIN: That's what I understand. 02:02:55 11 Q (BY MR. MIKHAIL) The period that we're allowed 02:02:57 12 to ask about. 02:02:59 13 A In the back of my mind kind of what that is, 02:02:60 14 somewhere in August of '96, I guess. 02:02:63 15 Q Okay. You don't wish to amend or modify your 02:02:66 16 answer based on his -- I think he was just making 02:02:69 17 clarification for the record. 02:02:71 18 MR. CREMIN: Yeah, that's all. I assume that 02:02:74 19 what he's talking about he did sometime before August of 02:02:78 20 '96. 02:02:81 21 THE WITNESS: Yes. 02:02:84 22 Q (BY MR. MIKHAIL) All right. You would agree 02:02:87 23 with me, would you not, Mr. Matheson, that legislation that 02:02:90 24 deals with use restrictions has an impact on public health 02:02:94 25 in Oklahoma, does it not?

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1       MR. STEWART: Objection, form.  
 2       A I wouldn't necessarily agree with you, no, sir.  
 3       Q (BY MR. MIKHAIL) You don't believe that less use  
 4 or more use of cigarettes would have any implications on  
 5 the public health?  
 6       MR. STEWART: Objection to form.  
 7       A I don't have any way of knowing that. I mean,  
 8 I'm not a doctor, I'm not a scientist; I don't know.  
 9       Q (BY MR. MIKHAIL) Okay. You don't know if more  
 10 use of cigarettes would promote the public health or would  
 11 be disadvantageous or harmful to the public health?  
 12      MR. STEWART: Object to form.  
 13      A No, sir. No, sir, I do not.  
 14      Q (BY MR. MIKHAIL) Okay. Well, do you think as a  
 15 lobbyist, whatever client you're representing but including  
 16 R.J. Reynolds, when you are promoting the passage of  
 17 legislation or working to defeat legislation that any  
 18 health consequences resulting from whatever ultimate law  
 19 passes is important, health consequences to Oklahomans?  
 20      MR. STEWART: Objection to form.  
 21      Q (BY MR. MIKHAIL) You don't think as a lobbyist  
 22 that that is important?  
 23      MR. STEWART: Same objection.  
 24      A I think it's important.  
 25      Q (BY MR. MIKHAIL) Okay. If it's important, then

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1 tell me why you have not in the time period we're talking  
 2 about as a lobbyist for R.J. Reynolds presented information  
 3 to legislators when they were considering legislation on  
 4 the harmful effects of your client's product or the  
 5 addictive nature of nicotine in that product?  
 6       MR. STEWART: Objection to form.  
 7       A I've never received any information from my  
 8 client that says anything about the addictive nature or the  
 9 health effects of their product.  
 10      Q (BY MR. MIKHAIL) Okay. Isn't it true,  
 11 Mr. Matheson, that in working as a lobbyist for R.J.  
 12 Reynolds, that the issue of the health effects of the  
 13 product or the addictiveness of the product was not a  
 14 consideration in your lobbying activity for R.J. Reynolds?  
 15      A Say that again, please. I'm sorry.  
 16      Q The health issue of the use of the product was  
 17 not a consideration that R.J. Reynolds had or that you had  
 18 on behalf of R.J. Reynolds in working to either pass or  
 19 defeat legislation?  
 20      MR. STEWART: Objection to form.  
 21      A No, sir.  
 22      Q (BY MR. MIKHAIL) Health was not a consideration,  
 23 correct?  
 24      A No, sir -- yeah, you're correct, health was not a  
 25 consideration.

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02:05:47 1       Q Was not a consideration. Okay. So if -- strike  
 02:06:00 2 that.  
 02:06:04 3       Were you aware of a statement made by members of  
 02:06:10 4 the tobacco industry back in 1954 called the Frank  
 02:06:14 5 Statement? Have you heard of that?  
 02:06:16 6       A No, sir.  
 02:06:17 7       Q Okay. Well, you haven't heard of the statement,  
 02:06:20 8 but let me ask you this. Have you heard any reference to  
 02:06:24 9 the statement that the tobacco industry made a statement  
 02:06:26 10 publicly that health concerns are of paramount  
 02:06:30 11 consideration to them?  
 02:06:31 12      A No, sir.  
 02:06:32 13      Q You have not heard that?  
 02:06:33 14      A No, sir.  
 02:06:34 15      Q Okay. If, in fact, what I'm representing to you  
 02:06:37 16 is true, and I will represent to you that it is true, that  
 02:06:39 17 the Frank Statement in 1954 said that health is a paramount  
 02:06:44 18 consideration in the tobacco business, that would be  
 02:06:47 19 contrary to what the considerations are in the lobbying  
 02:06:50 20 activities of R.J. Reynolds in Oklahoma, correct?  
 02:06:52 21      MR. STEWART: Objection, form.  
 02:06:53 22      A I don't know. I'm sorry, but I mean, I don't  
 02:06:59 23 know what that statement said. You represented it to me as  
 02:07:04 24 saying something and I don't doubt your word. I don't know  
 02:07:07 25 exactly what they said, but as long as I have been employed

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02:07:10 1 by the tobacco industry, we have not used health as a  
 02:07:17 2 factor or as a method or a tool, or whatever, in lobbying.  
 02:07:22 3       Q (BY MR. MIKHAIL) Okay. But you have testified  
 02:07:24 4 that health is not a consideration in the lobbying  
 02:07:27 5 activities for or against legislation as it relates to R.J.  
 02:07:30 6 Reynolds, correct?  
 02:07:30 7       A Yes, sir.  
 02:07:31 8       Q Okay. And I'm telling you that the tobacco Frank  
 02:07:35 9 Statement said that health is a paramount consideration to  
 02:07:39 10 the tobacco industry members, the manufacturers. Those two  
 02:07:42 11 are inconsistent, are they not?  
 02:07:45 12      MR. STEWART: Objection, form.  
 02:07:49 13      Q (BY MR. MIKHAIL) You may answer.  
 02:07:50 14      A If they said in 1954 that health was a paramount  
 02:08:01 15 consideration -- did they say that was a paramount  
 02:08:05 16 consideration in lobbying?  
 02:08:07 17      Q No, they did not.  
 02:08:09 18      A Then I can't -- I'm sorry, I'm having trouble  
 02:08:11 19 equating the two then because if they said health was a  
 02:08:14 20 paramount concern --  
 02:08:15 21      Q In their business.  
 02:08:17 22      A -- in their business, and I can only relate it  
 02:08:20 23 to what's been told to me in lobbying and how I go about  
 02:08:25 24 lobbying, and nobody has ever said to me that health is a  
 02:08:28 25 paramount concern.

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<p>02:08:29 1 Q Okay. So health is not a -- the lobbying 02:08:33 2 activities don't reflect -- in the tobacco activities, 02:08:36 3 tobacco lobbying activities don't reflect that health is a 02:08:41 4 paramount consideration?</p> <p>02:08:42 5 MR. STEWART: Objection, form.</p> <p>02:08:43 6 A Not in mine.</p> <p>02:08:45 7 Q (BY MR. MIKHAIL) Your experience with R.J. 02:08:47 8 Reynolds?</p> <p>02:08:47 9 A Yes, sir.</p> <p>02:08:47 10 Q In Oklahoma?</p> <p>02:08:48 11 A Yes, sir.</p> <p>02:08:52 12 MR. MIKHAIL: Do you want to take a break? Let's 02:08:53 13 take a break.</p> <p>02:08:54 14 MS. POTTER: Off the record at 02:08:55. 02:09:01 15 (A recess was had.)</p> <p>02:28:34 16 MS. POTTER: Back on the record at 02:28:38.</p> <p>02:28:39 17 Q (BY MR. MIKHAIL) Mr. Matheson, when we just took 02:28:43 18 a break now, did you discuss or did any of the counsel for 02:28:47 19 the defendants here or your counsel discuss with you any of 02:28:50 20 the answers that you gave since the last break?</p> <p>02:28:55 21 A We discussed the framing of the answers.</p> <p>02:29:00 22 Q Any particular answer?</p> <p>02:29:07 23 A A couple of -- a couple of answers as they 02:29:11 24 related to the way I responded on -- in effect, agreeing 02:29:16 25 with you when you said do you agree or would it be</p>	<p>02:30:48 1 deposition was set for three or four days before I was 02:30:52 2 supposed to get back.</p> <p>02:30:53 3 Q Okay. Other than scheduling problems, and I know 02:30:55 4 you've talked to David or someone on your behalf has talked 02:30:58 5 to David about rescheduling, but other than the logistics 02:31:02 6 of the deposition and the production of documents, did you 02:31:04 7 discuss what testimony you might anticipate giving with 02:31:09 8 anyone from R.J. Reynolds?</p> <p>02:31:10 9 A No, sir.</p> <p>02:31:11 10 Q Did you discuss it with any counsel for any of 02:31:14 11 the tobacco manufacturers?</p> <p>02:31:16 12 A No, sir.</p> <p>02:31:17 13 Q Did you have any kind of preparation session for 02:31:20 14 this deposition today with any counsel, any lawyer?</p> <p>02:31:23 15 A Yes, sir.</p> <p>02:31:23 16 Q Who is that?</p> <p>02:31:24 17 A Mr. Cremin and Mr. Stewart yesterday.</p> <p>02:31:29 18 Q Was it the first session that you had in 02:31:31 19 preparation for the deposition?</p> <p>02:31:33 20 A Yes, sir.</p> <p>02:31:33 21 Q Okay. No other lawyers were present?</p> <p>02:31:38 22 A No, sir.</p> <p>02:31:39 23 Q Okay. Did Mr. Stewart -- again, I'm not trying 02:31:42 24 to invade your privileges, but did Mr. Stewart or 02:31:33 25 Mr. Cremin -- am I pronouncing your name correctly?</p>
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<p>02:29:19 1 reasonable that it's --</p> <p>02:29:34 2 MR. CREMIN: I don't want you to answer any more 02:29:25 3 than that because any more than that would invade my 02:29:29 4 privilege with him.</p> <p>02:29:29 5 Q (BY MR. MIKHAIL) I don't want to invade the 02:29:31 6 privilege. What I'm trying to do is substance-wise, did 02:29:35 7 counsel discuss with you the substance of your answer; in 02:29:37 8 other words, an answer you gave or didn't give?</p> <p>02:29:39 9 A No, sir.</p> <p>02:29:40 10 Q Okay. When you received the notice of deposition 02:29:47 11 and subpoena, what did you do first when you received it, 02:29:48 12 did you call anyone, did you --</p> <p>02:29:53 13 A Yeah, I did. I sure did.</p> <p>02:29:58 14 Q Call Pat?</p> <p>02:29:59 15 A No, I eventually called Pat, but I called --</p> <p>02:30:05 16 actually, that evening I sent a fax to my now regional 02:30:13 17 director Henry Stokes at R.J. Reynolds, and I may have sent 02:30:19 18 a copy to Mr. Stewart, I don't really remember, because of 02:30:22 19 the dates of the subpoena. We had had this discussion back 02:30:26 20 in April and early May that I didn't want to get deposed 02:30:30 21 towards the last couple of weeks of session because it's an 02:30:34 22 extremely busy time and I didn't want my vacation 02:30:38 23 interrupted. I take every year for the last 25 years and I 02:30:41 24 go fishing in northern Minnesota, and the dates of 02:30:45 25 production were the day I'm supposed to leave town and the</p>	<p>02:32:01 1 MR. CREMIN: You're about the only person that's 02:32:03 2 ever done it in history.</p> <p>02:32:04 3 MR. MIKHAIL: Well, I'm Mikhail and so I 02:32:06 4 sympathize.</p> <p>02:32:09 5 MR. CREMIN: I always get Cramer and Cremins.</p> <p>02:32:13 6 It's Cremin like a Cremin, no i-l.</p> <p>02:32:17 7 Q (BY MR. MIKHAIL) Other than giving you, you 02:32:19 8 know, procedure and tips on just depositions in general, 02:32:21 9 since that's what lawyers do with their clients, did they 02:32:25 10 discuss the substance of proposed testimony?</p> <p>02:32:29 11 A No.</p> <p>02:32:29 12 Q In other words, did they say there's certain 02:32:32 13 things that you need to say or certain things you don't 02:32:34 14 need to voice anything on?</p> <p>02:32:35 15 A No. They said I need to tell the truth.</p> <p>02:32:37 16 Q Okay. But you did not discuss the substance of 02:32:40 17 your testimony?</p> <p>02:32:40 18 A No, sir.</p> <p>02:32:40 19 Q Okay. Do you believe, Mr. Matheson, that a 02:32:51 20 manufacturer of a product such as R.J. Reynolds, whom you 02:32:55 21 represent as a lobbyist, has a duty to warn consumers of 02:32:58 22 that product in Oklahoma about the dangers of the product?</p> <p>02:33:03 23 MR. STEWART: Objection, form.</p> <p>02:33:05 24 A I don't know what they think the dangers are or 02:33:11 25 if they think there are any dangers. It would be real hard</p>

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1 for me to --  
 2 Q (BY MR. MIKHAIL) Okay. In your lobbying  
 3 activity, did R.J. Reynolds ever inform you of any dangers  
 4 of their product?  
 5 A No, sir.  
 6 Q Did they ever inform you anything about the  
 7 addictive nature of nicotine in the product?  
 8 MR. STEWART: Objection, form.  
 9 A No, sir.  
 10 Q (BY MR. MIKHAIL) Okay. Did they ever share with  
 11 you any internal research or internal documents or internal  
 12 information they had about the health consequences of their  
 13 product or the addictiveness of their product?  
 14 A No, sir.  
 15 Q Is there a code of ethics for lobbyists in  
 16 Oklahoma? Is there an association of lobbyists, is there a  
 17 code of ethics that you --  
 18 A No, but --  
 19 MR. CREMIN: Wait a minute. Object to the form  
 20 of the question. That's two questions, is there a code of  
 21 ethics, is there an association.  
 22 MR. MIKHAIL: I'll split them up. Thank you.  
 23 It's easy to fall in that trap sometimes. Let's split them  
 24 up.  
 25 Q (BY MR. MIKHAIL) Is there a code of ethics for

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1 lobbyists in Oklahoma?  
 2 A Are you asking me -- I mean, do lobbyists sit  
 3 down and draft code of ethics or are there some legal  
 4 standards?  
 5 Q Is there a law in Oklahoma that imposes certain  
 6 standards on lobbyists in their activities?  
 7 A Yes, sir.  
 8 Q Okay. Other than disclosure requirements as far  
 9 as who their clients are and expenses or finance, et  
 10 cetera, is there any ethical standards as far as their  
 11 conduct?  
 12 A Yes, sir.  
 13 Q By law?  
 14 A Yes, sir.  
 15 Q Okay. And what are those?  
 16 A Generally, one, you can't lobby on a contingency  
 17 fee basis. That's a felony. You are forbidden from  
 18 providing information to legislators that you know to be  
 19 untrue. You -- like I say, we have to register, file  
 20 reports twice a year, but the primary -- I think the  
 21 primary, I guess ethical standard in that would be that you  
 22 cannot, you know, present anything that you don't believe  
 23 to be accurate and true and that you can't, you know,  
 24 violate the spending limits and things of that nature.  
 25 Q Did you have a duty and do you have a duty,

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02:35:37 1 actually, up until August, 1996, is that the cutoff,  
 02:35:42 2 August, '96?  
 02:35:44 3 MR. CREMIN: Uh-huh.  
 02:35:44 4 Q (BY MR. MIKHAIL) To provide legislators in  
 02:35:47 5 Oklahoma with truthful information in your lobbying  
 02:35:51 6 activities for R.J. Reynolds?  
 02:35:52 7 MR. STEWART: Objection, form.  
 02:35:53 8 A As I said, the law requires us to, you know, to  
 02:36:01 9 provide factual, truthful information.  
 02:36:03 10 Q (BY MR. MIKHAIL) Okay. Does it require you to  
 02:36:06 11 give complete information?  
 02:36:07 12 MR. CREMIN: Object to the form.  
 02:36:08 13 A No. I mean, you give whatever information that  
 02:36:16 14 you have or that you want to use.  
 02:36:18 15 Q (BY MR. MIKHAIL) But it has to be truthful?  
 02:36:19 16 A Yes, sir.  
 02:36:20 17 Q Okay. Let's go into the area of minors in  
 02:36:24 18 Oklahoma as it relates to smoking.  
 02:36:36 19 MR. CREMIN: Minors meaning juveniles and not  
 02:36:40 20 guys looking for coal?  
 02:36:44 21 MR. MIKHAIL: That's right.  
 02:36:44 22 THE WITNESS: Or gold.  
 02:36:45 23 MR. CREMIN: We don't have any gold, we have  
 02:36:47 24 coal.  
 02:36:47 25 Q (BY MR. MIKHAIL) Under age Oklahomans. What

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02:36:55 1 has, in your years of working as a lobbyist for R.J.  
 02:36:58 2 Reynolds has R.J. Reynolds' position been as to youth  
 02:37:04 3 smoking? And I say youth smoking, under age smoking.  
 02:37:09 4 A Assuming that our law is 18, which it is, that  
 02:37:12 5 we're talking about that?  
 02:37:13 6 Q Yes.  
 02:37:13 7 A And you say what has been --  
 02:37:16 8 Q What has been R.J. Reynolds' position as to  
 02:37:19 9 minors, under age Oklahomans, smoking cigarettes?  
 02:37:24 10 MR. CREMIN: Insofar as he knows or from --  
 02:37:27 11 Q (BY MR. MIKHAIL) From your work as a lobbyist,  
 02:37:29 12 what, if any, was R.J. Reynolds' position on that?  
 02:37:31 13 A The position has been consistently since I've  
 02:37:34 14 worked for them that it's been represented to me is that  
 02:37:40 15 the company does not -- actually, very strongly believes  
 02:37:46 16 that, you know, children, quote unquote, under 18 should  
 02:37:50 17 not smoke. I have been given, you know, programs and  
 02:37:53 18 literatures that they have produced to say that, you know,  
 02:38:00 19 children shouldn't smoke and programs to do that. That's  
 02:38:05 20 been the position.  
 02:38:05 21 Q Okay. And in any of the materials that were  
 02:38:14 22 furnished to you by R.J. Reynolds to give out as to under  
 02:38:21 23 age smoking or any of the positions that they stated to you  
 02:38:25 24 for you to convey to legislators, was anything mentioned  
 02:38:29 25 about the health consequences of the product?

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02:38:32 1 A Not that I recall, no, sir.	02:41:27 1 about it and heard the Synar Amendment, but I've never seen
02:38:35 2 MR. CREMIN: Counsel, as a point of	02:41:31 2 it or read it.
02:38:37 3 clarification, in the answer to the previous question,	02:41:32 3 Q Okay. You can't tell me today what it generally
02:38:40 4 Mr. Matheson began with, "The company does not believe,"	02:41:34 4 provided for?
02:38:44 5 and then he sort of bollixed it up and it may have come out	02:41:40 5 A All I know is I was told somewhere along the way
02:38:49 6 sounding like he said the company does not believe that	02:41:46 6 that it required states to do something in the prevention
02:38:51 7 children under 18 should not smoke.	02:41:52 7 of youth smoking or we would lose, under what's called the
02:38:54 8 MR. MIKHAIL: Okay. You want to correct that?	02:41:56 8 ADAMHA act, I don't even know what that is, but we would
02:38:55 9 MR. CREMIN: I think he needs to correct that.	02:42:00 9 lose funds that go to --
02:38:57 10 I'm not sure but that's the way I heard it because I was	02:42:01 10 Q Mental health?
02:39:00 11 writing it down.	02:42:04 11 A -- drug and mental health programs.
02:39:00 12 A Well, then let me make it real clear, if I can.	02:42:07 12 Q Mike Synar was -- I know he's deceased now, but
02:39:05 13 It has been the company's position that minors should not	02:42:11 13 he's from Oklahoma, correct?
02:39:07 14 smoke.	02:42:11 14 A Yes, sir.
02:39:07 15 Q (BY MR. MIKHAIL) Has it been the company's	02:42:11 15 Q Okay. Did you know Congressman Synar?
02:39:09 16 position that minors should not have access to tobacco	02:42:13 16 A Quite well.
02:39:13 17 products?	02:42:15 17 Q Okay. You, at least to my knowledge you
02:39:15 18 A That would -- yes, that goes right along with it.	02:42:18 18 described the amendment correctly in that it required the
02:39:25 19 Q Has it been R.J. Reynolds' concern about under	02:42:19 19 states enforce laws dealing with youth access. Did you, on
02:39:33 20 age smoking because of health consequences of the product,	02:42:20 20 behalf of R.J. Reynolds, submit to any legislator a model
02:39:37 21 or is it because they're under age and they're not adults?	02:42:21 21 bill or a proposed bill on youth access as a result of the
02:39:41 22 MR. CREMIN: You want --	02:42:22 22 Synar Amendment?
02:39:45 23 Q (BY MR. MIKHAIL) From what you know of R.J.	02:42:23 23 A I did not.
02:39:47 24 Reynolds as their lobbyist, was their concern and their	02:42:24 24 Q Do you know if any other tobacco manufacturer or
02:39:51 25 opposition to under age smoking because of the health	02:42:25 25 Tobacco Institute lobbyist did that?
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02:39:55 1 consequences of the product or because it's under age and	02:43:05 1 A And I'm trying to make sure, you know, I do this
02:39:57 2 not adult smoking?	02:43:06 2 correctly and understand this correctly because I think
02:39:59 3 MR. STEWART: Object to the form.	02:43:12 3 I -- after the fact, I know that there was some piece of
02:39:59 4 A I can only tell you what's been represented to me.	02:43:16 4 model legislation that was given to some legislators. I
02:40:02 5 Q (BY MR. MIKHAIL) What you know.	02:43:19 5 don't remember specifically who did that. I was not
02:40:03 6 A And to me, that is that smoking is an adult	02:43:21 6 present.
02:40:06 7 choice and that when they become adults, they can make that	02:43:24 7 Q Okay. Do you know who was actually providing and
02:40:09 8 choice.	02:43:27 8 furnishing that model bill? I mean, which manufacturer,
02:40:09 9 Q Okay. What has been R.J. Reynolds' position in	02:43:32 9 was it the Tobacco Institute; do you know?
02:40:24 10 the time period that we're talking about that you worked as	02:43:10 10 A No, sir, I don't know.
02:40:27 11 a lobbyist for them in the time frame that is allowed by	02:43:11 11 Q Okay. Were you aware, Mr. Matheson, when the
02:40:30 12 the Court as to preemption in laws dealing with under age	02:43:12 12 bill passed and became law after the Synar Amendment in
02:40:40 13 access to tobacco, minor's access to tobacco?	02:43:13 13 Oklahoma that the Tobacco Institute's law firm in
02:40:43 14 MR. CREMIN: In Oklahoma with regard to him?	02:43:14 14 Washington D.C., Covington and Burling, had drafted a model
02:40:46 15 Q (BY MR. MIKHAIL) Yes, in Oklahoma. I'm sorry.	02:43:15 15 youth access bill as a result of Synar, were you aware of
02:40:49 16 A I don't recall any position on the issue of	02:44:00 16 that?
02:40:52 17 preemption and minors, that being connected in any way.	02:44:01 17 MR. MacLAREN: Object.
02:40:56 18 Q Okay. Isn't it true, Mr. Matheson, that in 1994	02:44:02 18 A No, sir.
02:41:04 19 as a result of the Synar Amendment, a youth prevention or	02:44:03 19 Q (BY MR. MIKHAIL) Okay. Were you aware that a
02:41:14 20 Prevention Youth Access To Tobacco Act was passed in	02:44:06 20 model bill was furnished by the Tobacco Institute to
02:41:19 21 Oklahoma?	02:44:07 21 various lobbyists around the country to furnish -- in order
02:41:20 22 A Yes, sir.	02:44:12 22 for them to furnish to legislators in their state?
02:41:23 23 Q All right. And you are familiar with the Synar	02:44:16 23 A No, sir.
02:41:24 24 Amendment, aren't you?	02:44:16 24 Q Okay. Are you aware that in the model bill for
02:41:24 25 A I've never read what the Synar -- I've heard	02:44:25 25 Oklahoma that there was a preemption provision as it

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1 relates to youth access, that being that laws dealing with  
 2 youth access are to be on a statewide and not allow  
 3 local and communicates to pass more restrictive laws than  
 4 what the model bill proposed?

5 MR. STEWART: Object to the form.

6 MR. CREMIN: Object to the form of the question.

7 Q (BY MR. MIKHAIL ) Did you understand the  
 8 question?

9 A I think so, but if you could just kind of run it  
 10 back at me one more time.

11 Q Were you aware that the youth access bill  
 12 proposed by the Tobacco Institute in Oklahoma was or had a  
 13 preemption provision in it?

14 MR. MacLAREN: Object to form.

15 A I'm aware that when the bill finally passed, it  
 16 had that in there. I don't know if it was in the original  
 17 draft or not.

18 Q (BY MR. MIKHAIL ) Okay. And as it relates to  
 19 youth access laws and bills in Oklahoma, R.J. Reynolds has  
 20 been in favor of preemption as it related to youth access  
 21 laws in Oklahoma, has it not?

22 A You know, I really don't know that because when  
 23 the ADAMHA bill was passed, I obviously was involved in it  
 24 along with other tobacco lobbyists, but I didn't do the  
 25 direct dealing with legislators -- I mean, on the actual

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1 getting it drafted and introduced and that sort of thing.  
 2 So I just -- I can't answer that, I don't think.

3 Q Well, surely you knew at the time that when you  
 4 were working to have that legislation passed that it  
 5 contained a preemption provision as it related to youth  
 6 access laws?

7 A Yes, sir. Yes, sir.

8 Q And that's what R.J. Reynolds favored, a  
 9 preemption provision in the youth access law?

10 A I don't believe I ever had a discussion with them  
 11 on that.

12 Q Okay. But they didn't ask you or have you  
 13 attempt to work against preemption provision in that law,  
 14 did they?

15 A No, sir.

16 Q Okay. So they were satisfied and wanted a  
 17 preemption agreement in the minors law?

18 MR. STEWART: Objection to form.

19 Q (BY MR. MIKHAIL ) Youth access laws?

20 MR. STEWART: Objection.

21 A See, the companies don't always agree on  
 22 everything.

23 Q (BY MR. MIKHAIL ) Let's deal with R.J. Reynolds.

24 Was R.J. Reynolds in favor of the preemption provision in  
 25 the youth access law?

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02:46:52 1 MR. CREMIN: He already answered that, Counsel.

02:46:54 2 He doesn't know. I guess you could ask him ten times, but

02:46:56 3 he doesn't know.

02:46:57 4 A I never discussed it with them and I just -- I

02:47:01 5 mean, I really don't -- I can't truthfully answer that

02:47:05 6 question saying I know that because I never discussed it

02:47:08 7 with them.

02:47:08 8 Q (BY MR. MIKHAIL ) Okay. But it had a preemption

02:47:11 9 provision and they didn't ask you to remove it?

02:47:13 10 A That's correct.

02:47:15 11 Q Could you explain to me, if you know, why R.J.

02:47:18 12 Reynolds is going along with or wanted or liked a

02:47:29 13 preemption provision in that law?

02:47:34 14 MR. STEWART: Objection to form.

02:47:35 15 A You used the -- you said went along with or liked

02:47:40 16 or wanted. Okay. Let me deal with went along because I

02:47:44 17 don't know about the others. Went along because -- I mean,

02:47:47 18 even if they didn't like it, probably in the sort of spirit

02:47:51 19 of cooperation, they may not have made any objection to it.

02:47:54 20 Q (BY MR. MIKHAIL ) But they promoted passage of

02:48:01 21 that legislation, didn't they, Mr. Matheson?

02:48:03 22 A Through me, yes, sir.

02:48:05 23 Q Yes. And it included a preemption provision?

02:48:08 24 A Yes, sir.

02:48:05 25 Q Okay. Do you know why they were promoting

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02:48:09 1 passage of youth access law that contained a preemption  
 02:48:13 2 provision?

02:48:16 3 A The companies -- or the company, in my case,

02:48:20 4 Reynolds, I know we favor preemption clauses generally

02:48:24 5 because of -- so you have uniformity throughout the state

02:48:28 6 in enforcement of whatever those laws are, so you don't

02:48:36 7 have a local ordinance in Tulsa and maybe there's a company

02:48:40 8 that operates here in Tulsa and they operate in six or

02:48:44 9 other -- six or eight other towns in the state, that they

02:48:49 10 don't have to worry about how they enforce -- enforce one

02:48:53 11 law here, another one over here, another one over here,

02:48:58 12 another one over here. And that's the general reason for

02:48:59 13 the concept of preemption.

02:49:02 14 Q Okay. But as it specifically relates to youth

02:49:06 15 access laws, do you know why R.J. Reynolds was promoting

02:49:11 16 legislation relating to youth access that contained a

02:49:14 17 preemption provision?

02:49:15 18 MR. STEWART: Objection, form.

02:49:16 19 A The answer I just gave.

02:49:20 20 Q (BY MR. MIKHAIL ) Okay. Were you aware when you

02:49:24 21 worked to promote that legislation dealing with youth

02:49:28 22 access with the preemption provision in it that enforcement

02:49:32 23 was to be at the state level and not at the local level?

02:49:36 24 A I'm trying -- I'm needing to think just a minute

02:49:38 25 because I know that now the law -- and it was changed --

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<p>02:50:00 1 Q I understand.</p> <p>02:50:01 2 A -- to allow enforcement at the local level. And</p> <p>02:50:05 3 I believe at the time that bill passed, I think it provides</p> <p>02:50:08 4 for enforcement at the local level through cooperation with</p> <p>02:50:13 5 the state officials.</p> <p>02:50:14 6 Q Right. But it did not allow local communities</p> <p>02:50:18 7 and townships and cities to enforce youth access laws by</p> <p>02:50:24 8 themselves, did it?</p> <p>02:50:25 9 A As I recall the first bill that passed, I think</p> <p>02:50:31 10 that's correct. I'm not sure.</p> <p>02:50:32 11 Q Okay. And it also prohibited sting operations at</p> <p>02:50:36 12 the local level by voluntary health groups, didn't it?</p> <p>02:50:42 13 A What do you mean by voluntary health groups?</p> <p>02:50:44 14 Q In other words, the heart association or the</p> <p>02:50:46 15 cancer society couldn't go out there and do a sting</p> <p>02:50:50 16 operation on a convenience store to see if they were</p> <p>02:50:53 17 enforcing the youth access law?</p> <p>02:50:57 18 A Well, I don't think we can give -- I don't think</p> <p>02:51:01 19 the state -- well, I guess they could, but I don't think</p> <p>02:51:03 20 the state is going to give any private organization the</p> <p>02:51:05 21 authority to go out and enforce state law.</p> <p>02:51:08 22 Q Okay. Well, you are aware in 1994 when you were</p> <p>02:51:11 23 working to have that bill passed that one of the provisions</p> <p>02:51:14 24 in the model bill that R.J. Reynolds wanted was that it</p> <p>02:51:19 25 prohibited sting operations of that nature at the local</p>	<p>02:53:06 1 compliance with youth access laws by retailers.</p> <p>02:53:10 2 A No, I'm not aware of that because I know that the</p> <p>02:53:13 3 state had to report to the feds on compliance, but I</p> <p>02:53:20 4 never -- I don't know what you mean by surveys exactly,</p> <p>02:53:23 5 but --</p> <p>02:53:23 6 Q Okay. Were you aware that the youth access bill</p> <p>02:53:28 7 proposed and supported by R.J. Reynolds and the Tobacco</p> <p>02:53:32 8 Institute did not provide for penalties for the owners of</p> <p>02:53:42 9 the establishments, only the clerks who sell tobacco to</p> <p>02:53:47 10 minors?</p> <p>02:53:47 11 MR. STEWART: Objection, form.</p> <p>02:53:49 12 A And let me kind of clarify something because I</p> <p>02:53:52 13 don't sound like I'm a total dummy about this legislation,</p> <p>02:53:56 14 but the -- in those areas, the oil marketers, grocer's</p> <p>02:54:08 15 association were the most active participants and</p> <p>02:54:12 16 proponents in that area. And it wasn't something that we</p> <p>02:54:16 17 had strong feelings about one way or another, but they --</p> <p>02:54:21 18 they were the ones who really hammered on that point -- on</p> <p>02:54:25 19 those points about who gets fined and who gets fired and</p> <p>02:54:29 20 that sort of thing.</p> <p>02:54:30 21 Q (BY MR. MIKHAIL) But their position coincided</p> <p>02:54:33 22 with R.J. Reynolds' position, didn't it?</p> <p>02:54:35 23 A Not necessarily, sir, no, sir.</p> <p>02:54:36 24 Q Well, was R.J. Reynolds in favor of all these</p> <p>02:54:39 25 restrictions that I talked about that were -- did they not</p>
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<p>02:51:22 1 level?</p> <p>02:51:25 2 A I'm only aware that the final legislation that</p> <p>02:51:28 3 passed prohibited private organizations from going out and</p> <p>02:51:33 4 enforcing state law.</p> <p>02:51:34 5 Q Okay. Were you aware that the youth access</p> <p>02:51:39 6 provisions favored by R.J. Reynolds were against the</p> <p>02:52:05 7 licensing of vendors, of tobacco vendors?</p> <p>02:52:09 8 MR. STEWART: Objection, form.</p> <p>02:52:11 9 A Against the licensing of vendors?</p> <p>02:52:13 10 Q (BY MR. MIKHAIL) Including like retailers of</p> <p>02:52:16 11 tobacco, convenience stores.</p> <p>02:52:18 12 MR. STEWART: Same objection.</p> <p>02:52:19 13 A They've always been licensed.</p> <p>02:52:21 14 Q (BY MR. MIKHAIL) They were licensed before the</p> <p>02:52:22 15 youth access law in 1994?</p> <p>02:52:24 16 A Yes, sir.</p> <p>02:52:25 17 Q How long have they been licensed before that?</p> <p>02:52:28 18 A I don't know.</p> <p>02:52:29 19 Q Okay. Were you aware that the model youth access</p> <p>02:52:40 20 laws supported by R.J. Reynolds prohibited the conduction</p> <p>02:52:44 21 of surveys to determine retail compliance?</p> <p>02:52:46 22 A No, sir.</p> <p>02:52:49 23 MR. STEWART: Objection, form.</p> <p>02:53:01 24 A Surveys?</p> <p>02:53:03 25 Q (BY MR. MIKHAIL) State surveys to determine</p>	<p>02:54:44 1 coincide with what the retailers wanted?</p> <p>02:54:46 2 MR. CREMIN: I'm going to object to that question</p> <p>02:54:48 3 because I don't know what you're talking about.</p> <p>02:54:49 4 Q (BY MR. MIKHAIL) Well, as to the provisions that</p> <p>02:54:51 5 we just discussed in the youth access bill.</p> <p>02:54:53 6 A We've discussed about seven or eight different</p> <p>02:54:57 7 provisions and the last thing we were talking about was</p> <p>02:54:59 8 whether the owner or the clerk gets fined.</p> <p>02:55:02 9 Q Okay. Let me go back. The industry supported</p> <p>02:55:05 10 the passage of the 1994 Youth Prevention Access to Tobacco</p> <p>02:55:10 11 Act?</p> <p>02:55:12 12 A Yes, sir.</p> <p>02:55:12 13 Q All right. And I'm asking you, did the retailers</p> <p>02:55:21 14 support that bill, as well?</p> <p>02:55:23 15 A Not in the beginning.</p> <p>02:55:25 16 Q Okay. And what was their opposition to it?</p> <p>02:55:28 17 A Their opposition was as it related to an owner</p> <p>02:55:34 18 who may have -- we have a corporation here in Tulsa that</p> <p>02:55:39 19 has 150 convenience stores, in that they were concerned</p> <p>02:55:44 20 that the owner would be either arrested, fined, or have</p> <p>02:55:49 21 some -- maybe have a chance of losing their license to sell</p> <p>02:55:53 22 tobacco products because a clerk maybe, you know, sold</p> <p>02:56:02 23 cigarettes to a relative or friend or high school buddy, or</p> <p>02:56:06 24 whatever. And so they were very adamant about those things</p> <p>02:56:11 25 and that wasn't an area that was, you know, of great</p>

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1 concern to us, necessarily. We wanted to help them, if we  
2 could, obviously, but that wasn't an area of very concern  
3 to us.

4 Q And why did you want to help them?

5 A Because they are customers of our companies.

6 Q Well, if clerks sell tobacco to minors in  
7 violation of the law, they can get fired, can't they?

8 A Absolutely. I mean, that's up to -- you know,  
9 that's up to -- well, originally, it was up to the owner of  
10 the store. I know, you know, at least one group, that's a  
11 policy, the first time you do it, you're gone.

12 Q Right. The owner doesn't suffer any penalty for  
13 his or her store selling tobacco to minors, do they?

14 A They can now.

15 Q They can now. I'm talking about under the bill  
16 that the industry promoted in 1994.

17 A I believe that's correct. I'm --

18 Q Okay. Did the Tobacco Institute or R.J.  
19 Reynolds, the two entities that you have lobbied for,  
20 propose any legislation in Oklahoma dealing with youth  
21 access, under age access to tobacco products, prior to  
22 1994, 1993, '94, prior to the Synar Amendment requirements?

23 A I can't answer for the Tobacco Institute after  
24 the spring of 1987 because I didn't work for them after  
25 that.

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1 Q Okay. What about R.J. Reynolds?

2 A And the question was?

3 Q Prior to the 1994 --

4 A The ADAMHA?

5 Q Yeah, the ADAMHA act when Synar required it, did  
6 R.J. Reynolds, to your knowledge, attempt to have passed in  
7 Oklahoma a youth access law?

8 A Specifically, no.

9 Q Okay. And isn't it true that R.J. Reynolds only  
10 supported passage of a youth access law in Oklahoma after  
11 Synar required that a law be passed and one was going to be  
12 passed; isn't that true?

13 A I don't think that's 100 percent true.

14 Q Correct me.

15 A In -- and access is a broad word, obviously, but  
16 in about 1990, '91, somewhere in there, there was  
17 legislation pending to allow schools to prohibit smoking on  
18 the grounds of K through 12, kindergarten through the 12th  
19 grade. That legislation was floundering because the  
20 authors were -- one was a freshman House member and the  
21 other one had been there a little longer but still didn't  
22 know, and that -- it was just -- it wasn't making it, and I  
23 know several of us worked on helping rewrite that in such a  
24 way that it could pass.

25 Q Okay.

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02:59:41 1 A Which would, in my opinion, restrict at least  
02:59:48 2 access to tobacco during the school day.

02:59:50 3 Q Okay. That was legislation that was introduced  
02:59:52 4 by someone and then R.J. Reynolds attempted to have some  
02:59:59 5 modifications or changes made to it, correct?

03:00:03 6 A We attempted to modify it, get it in a fashion  
03:00:07 7 where they could pass it, yes, sir.

03:00:09 8 Q Right.

03:00:10 9 A But we didn't --

03:00:11 10 Q Until Synar, they didn't sponsor a bill --

03:00:12 11 A "They" being R.J. Reynolds?

03:00:13 12 Q Have a legislator from Oklahoma sponsor a youth  
03:00:14 13 access to tobacco law in Oklahoma?

03:00:14 14 A They did not have me do that, I know.

03:00:15 15 Q All right. Did Ken Nance provide a legislator  
03:00:16 16 with the ADAMHA proposed bill from the Tobacco Institute?

03:00:17 17 MR. STEWART: Object to form.

03:00:18 18 Q (BY MR. MIKHAIL) If he knows.

03:00:19 19 A I don't know.

03:00:20 20 MS. POTTER: Excuse me, we're at the end of the  
03:00:21 videotape. This is the end of tape one, off the record at  
03:00:22 03:00:50.

03:00:23 23 MR. CREMIN: Why don't we break for lunch now and  
03:00:24 come back about 12:45.

03:00:25 25 (A lunch recess was had.)

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03:58:36 1 MS. POTTER: This begins tape two. Back on the  
03:58:43 2 record at 03:58:46.

03:58:45 3 Q (BY MR. MIKHAIL) Mr. Matheson, I hope you had a  
03:58:51 4 good lunch.

03:58:52 5 A Somebody else paid and so it was good.

03:58:55 6 Q Okay. Let's go back just for a moment to some  
03:58:57 7 questions that I asked you or to an area that I asked you  
03:58:60 8 questions about, about providing legislators with  
03:58:65 9 information. You testified that you are required under the  
03:58:68 10 law and that you do provide them with truthful information;  
03:58:72 11 is that correct?

03:58:73 12 A Yes, sir.

03:58:75 13 Q Okay. When acting as a lobbyist for R.J.  
03:58:77 14 Reynolds in the years in question and you provided  
03:58:80 15 information to legislators on legislation pending that was  
03:58:83 16 of interest to RJR, did you intend that the legislators  
03:58:86 17 rely on the information that you were providing them on  
03:58:89 18 behalf of R.J. Reynolds?

03:58:91 19 A I don't think that would be what I could say was  
03:58:94 20 my intent. I view my job as to provide them information.

03:58:97 21 They have information from other sources, too, and that --  
03:58:99 22 and I may be different than others in this, but I think  
03:59:02 23 they need to look at all the information at their disposal  
03:59:05 24 and make their decisions. Hopefully, I've given them good  
03:59:08 25 enough information they will decide in my favor.

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<p>04:00:07 1 Q I understand that they get information from other      04:00:09 2 sources, but when you come to a legislator and you provide      04:00:12 3 him with information as a lobbyist for R.J. Reynolds, do      04:00:17 4 you intend that they act on that legislation in reliance on      04:00:23 5 the information that you give them? I mean, they have      04:00:26 6 other information, but I'm talking about do you intend that      04:00:29 7 they act on reliance in information, at least on part, on      04:00:32 8 the information that you've given them?</p> <p>04:00:35 9 MR. STEWART: Objection, form.</p> <p>04:00:36 10 A I expect them to, if they know me well enough, to      04:00:44 11 believe that what I have given them is factual and truthful      04:00:48 12 and to use that in the process of making their decision. I      04:00:57 13 never tell a legislator, look, you vote this way because of      04:01:01 14 this information. Maybe that's because I used to be one,      04:01:06 15 but I really think that my job is to give them the best      04:01:10 16 information I have and for them to take that and then make      04:01:13 17 their decision and make their votes based on the      04:01:16 18 information they have at their disposal.</p> <p>04:01:18 19 Q (BY MR. MIKHAIL) Well, do you want them not to      04:01:20 20 rely on the information that you give them?</p> <p>04:01:23 21 MR. STEWART: Objection, form.</p> <p>04:01:24 22 A I want them to take that information as truthful      04:01:34 23 and factual information, and I hope that in that process,      04:01:39 24 they will then want to vote the way I would vote if I was      04:01:45 25 doing the voting.</p>	<p>04:02:43 1 Q And vice versa, the information you provide the      04:02:47 2 legislator on behalf of R.J. Reynolds, if the end goal is      04:02:50 3 to have the legislation defeated would be information that      04:02:53 4 would support defeat of the legislation?</p> <p>04:02:56 5 A I think generally that's correct. I mean, it's      04:02:58 6 rare that you go in and give both sides, in effect. I      04:03:06 7 mean, you present your position as you understand it and      04:03:09 8 with the information you have at hand to them, and you may      04:03:14 9 not -- you may or may not have any information on the      04:03:17 10 other -- on the other position.</p> <p>04:03:19 11 Q But if the end goal is to pass a piece of      04:03:24 12 legislation and the information you give them is      04:03:26 13 information in support, that would support passage of the      04:03:29 14 legislation, don't you want them then to rely on that      04:03:31 15 information in accomplishing the end goal and that is      04:03:34 16 passing the legislation?</p> <p>04:03:35 17 MR. STEWART: Objection, form.</p> <p>04:03:36 18 A It would be my hope --</p> <p>04:03:39 19 Q (BY MR. MIKHAIL) ) Wouldn't that be your intent?</p> <p>04:03:42 20 MR. STEWART: Objection, form.</p> <p>04:03:45 21 Q (BY MR. MIKHAIL) You may answer.</p> <p>04:03:48 22 A Yes, I would intend that they accept that as      04:03:51 23 truthful, factual information and they use that in their      04:03:54 24 judgments of voting for or against the bill. And,      04:03:57 25 obviously, I'm there to get them -- in this case, if we're</p>
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<p>04:01:46 1 Q (BY MR. MIKHAIL ) Well, you would want them to      04:01:48 2 act on the information that you give them, don't you?</p> <p>04:01:51 3 MR. STEWART: Objection, form.</p> <p>04:01:52 4 A I'm not sure I understand what you mean by act,      04:01:56 5 okay. I --</p> <p>04:01:57 6 Q (BY MR. MIKHAIL ) All right. You come to a      04:02:00 7 legislator and you give the legislator information on      04:02:03 8 behalf of R.J. Reynolds that affects or that is in relation      04:02:06 9 to a piece of legislation that's pending and the      04:02:09 10 legislation is either going to get defeated or it's going      04:02:13 11 to get passed, correct?</p> <p>04:02:14 12 A Generally, yes, sir.</p> <p>04:02:15 13 Q Okay. And your client, in some instances, would      04:02:19 14 be in support or in favor of a particular piece of      04:02:21 15 legislation passing, correct?</p> <p>04:02:23 16 A Yes.</p> <p>04:02:25 17 Q And in some instances, your client would be      04:02:28 18 interested in the piece of legislation being defeated,      04:02:32 19 correct?</p> <p>04:02:30 20 A Yes, sir.</p> <p>04:02:32 21 Q And if you want some legislation to pass, the      04:02:35 22 information that you would be giving to the legislator from      04:02:38 23 R.J. Reynolds would be information that would be supportive      04:02:41 24 of the end goal, and that is that the legislation pass?</p> <p>04:02:43 25 A Correct.</p>	<p>04:03:57 1 talking about something we're for, I'd want them to use it      04:04:01 2 to vote for the bill.</p> <p>04:04:02 3 Q But you'd want them to be able to rely on the      04:04:05 4 information you give them, don't you?</p> <p>04:04:08 5 A Absolutely.</p> <p>04:04:11 6 Q I mean, your reputation is a good reputation,      04:04:14 7 isn't it?</p> <p>04:04:18 8 A I think so.</p> <p>04:04:20 9 Q And you give them truthful information?</p> <p>04:04:22 10 A Yes.</p> <p>04:04:25 11 Q So you would want them to rely on it?</p> <p>04:04:28 12 A I'm having trouble with the word rely, I guess.</p> <p>04:04:31 13 MR. CREMIN: Counsel, I don't think I understand      04:04:34 14 either. Rely is the hard time for me.</p> <p>04:04:37 15 MR. MIKHAIL: You can make an objection as to      04:04:40 16 vagueness or ambiguity. I --</p> <p>04:04:43 17 MR. CREMIN: I object to the form of the      04:04:46 18 question.</p> <p>04:04:49 19 MR. MIKHAIL: That's fine.</p> <p>04:04:52 20 MR. CREMIN: That -- rely, to me, is vague.</p> <p>04:04:55 21 MR. MIKHAIL: With all due respect, you can      04:04:58 22 object.</p> <p>04:05:01 23 Q (BY MR. MIKHAIL) But you give them truthful      04:05:04 24 information, don't you?</p> <p>04:05:07 25 A Yes, sir.</p>

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1 Q And it is either in support of or against certain  
2 legislation?  
3 A Yes, sir.  
4 Q And you would want them to go one way or the  
5 other, depending on what your client's position is, right?  
6 A Yes, sir.  
7 Q So you would want them to act in reliance on that  
8 information, don't you?  
9 A Again, and I may be a little bit different, I  
10 think my job is to present them the best information I have  
11 and to make the best arguments that I can make, but I  
12 really feel very strongly personally that a legislator has  
13 to take all of the information at their disposal in  
14 consideration, and they vote at that time. I -- you know,  
15 I never question a legislator after a vote is done.  
16 Q No, I understand. I don't mean to interrupt your  
17 answer, but go ahead.  
18 A No, that's about it.  
19 Q I understand that, but I mean, if the information  
20 is in support of passage and that's what your client wants,  
21 surely you'd want them to act on passing it, at least in  
22 part, in reliance on the information you're given if it's  
23 in support of the legislation?  
24 A Let me say it this way, I would want them to vote  
25 the position that I was advocating.

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1 Q All right. Let me ask you this question: When  
2 you provide a legislator information, you either would  
3 intend that they rely on it or that they not rely on it;  
4 isn't that true?  
5 MR. STEWART: Objection, form.  
6 MR. CREMIN: Same objection.  
7 A Again, I'm having a problem with rely, but I  
8 would say that I would expect them to accept that as solid,  
9 truthful information, and they know me, they know that I'm  
10 going to -- I'm not going to give them something that's  
11 false and if that's -- that is a part of their mental  
12 processes that they use this information to make a decision  
13 on the vote and I would want them to vote the way I would  
14 vote if I were in their position.  
15 Q (BY MR. MIKHAIL) In reliance on that  
16 information, at least in part?

17 MR. STEWART: Objection, form.  
18 A Well, I guess to me, you know, the definition --  
19 again, rely to me may not be the dictionary definition, but  
20 that's -- that is, say, taking this as the gospel and only  
21 truth right here, what this man has given me; and so,  
22 therefore, I'm going to rely on that to make my decision  
23 because -- and I won't even look at anything else because I  
24 can rely on this. So that's why I'm having trouble with  
25 that.

04:07:02 1 Q (BY MR. MIKHAIL) Well, the legislator can rely  
04:07:04 2 on information from various sources, not just you?  
04:07:06 3 A Correct.  
04:07:07 4 Q And you certainly are not of the notion when you  
04:07:09 5 go and give a legislator information from R.J. Reynolds  
04:07:13 6 that that's all the information that the legislator is  
04:07:16 7 going to have, do you?  
04:07:17 8 A No.  
04:07:18 9 Q I mean, there are other competing or opposing  
04:07:21 10 forces that are going to be providing that legislator with  
04:07:24 11 information, as well?  
04:07:25 12 A That's correct.  
04:07:25 13 Q And they give -- let's say the cancer society  
04:07:28 14 gives information to the legislator and they would want the  
04:07:31 15 legislator to vote the way they would want the legislator  
04:07:34 16 to vote; otherwise, why would they give that information?  
04:07:37 17 A This is what I said.  
04:07:38 18 Q Right. So the reason you're giving the  
04:07:40 19 information to the legislator is so that he would vote your  
04:07:43 20 way?  
04:07:43 21 A Yes.  
04:07:43 22 Q So you would want them to rely on the information  
04:07:46 23 in voting your way, wouldn't you?  
04:07:46 24 MR. MacLAREN: Object to form, repetitive and  
04:07:51 25 becoming argumentative.

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04:07:53 1 MR. MIKHAIL: You may -- objection is noted.  
04:07:54 2 A I'm not sure I can go beyond what I've said  
04:07:59 3 because I have, at least in my own mind, a definition of  
04:08:06 4 rely or reliance. And, as I said, I truly expect  
04:08:12 5 legislators to look at both sides of an issue and make  
04:08:15 6 their decision based on the information they have available  
04:08:17 7 to them.  
04:08:18 8 Q (BY MR. MIKHAIL) Okay. I don't want to badger  
04:08:20 9 you, I promise you that.  
04:08:21 10 A No, I understand. I understand, and I don't want  
04:08:22 11 to evade the question, but I just --  
04:08:24 12 Q Let me ask you this: When you give them the  
04:08:26 13 information that is in support of the position your client  
04:08:29 14 is taking or if it's against legislation; in other words,  
04:08:34 15 it's to defeat legislation, when they act on that piece of  
04:08:40 16 legislation, you want them to act on that legislation, in  
04:08:44 17 part, based on the information that you give them?  
04:08:46 18 A Yes.  
04:08:47 19 Q Okay. And the information you give them is  
04:08:50 20 truthful?  
04:08:50 21 A Yes.  
04:08:52 22 Q And if it's truthful, they don't have any reason  
04:08:55 23 not to accept it as truthful from you, do they?  
04:08:56 24 A No, sir.  
04:08:57 25 Q Okay. Did you discuss at any time prior to the

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04:09:01 1 deposition, prior to my questioning to you now with your 04:09:03 2 counsel or any counsel sitting here or any counsel for the 04:09:05 3 defendants the use of or term rely or reliance?	04:12:17 1 MR. CREMIN: There's the smoking gun, it's not 04:12:19 2 even there and another one, several pages. 04:12:23 3 MR. MIKHAIL: Actually, maybe it's one of the 04:12:25 4 exhibits.
04:09:14 4 A No. 04:09:15 5 MR. CREMIN: I don't want you to inquire what we 04:09:17 6 discussed. That's -- I think that's invading -- 04:09:18 7 MR. MIKHAIL: I'm not doing that. 04:09:19 8 MR. CREMIN: Yes. You just asked him if we 04:09:21 9 discussed whether or not he should answer questions 04:09:24 10 regarding rely. 04:09:25 11 MR. MIKHAIL: Well, that's a fair question. If a 04:09:27 12 witness is having trouble with a word, Pat -- 04:09:31 13 MR. CREMIN: You can't ask him what we 04:09:32 14 discussed. 04:09:33 15 MR. MIKHAIL: I'm not asking what you discussed, 04:09:35 16 I'm asking specifically if he discussed that. 04:09:37 17 MR. CREMIN: I'm not going to let him answer. 04:09:39 18 MR. MIKHAIL: Well, I'm going to put it on the 04:09:40 19 record. 04:09:41 20 MR. CREMIN: That's fine. 04:09:41 21 Q (BY MR. MIKHAIL) Did your counsel or any other 04:09:43 22 counsel discuss with you prior to your testimony use of the 04:09:45 23 word rely or reliance in answering questions? 04:09:51 24 A Absolutely not, sir. 04:09:52 25 Q Okay. That's fine.	04:12:25 5 MR. CREMIN: It probably is since you have 04:12:28 6 numerous invisible documents. 04:12:31 7 MR. MIKHAIL: That must be what happened to it. 04:12:33 8 It's one of those exhibits, it's right on the top. You see 04:12:36 9 it. That's what it is. There are not that many exhibits. 04:13:01 10 Find it, Jerry. 04:13:02 11 MR. EVANS: No, sorry. 04:13:04 12 MR. MIKHAIL: I don't see it here. I apologize, 04:13:07 13 I'll look for it during break. Excuse me, Mr. Matheson, 04:13:10 14 I'm sorry, these things happen. 04:13:12 15 THE WITNESS: No problem. 04:13:13 16 Q (BY MR. MIKHAIL) Let's go back to the issue of 04:13:15 17 taxation. Has R.J. Reynolds consistently in the time 04:13:18 18 period in question and in the time period that you have 04:13:21 19 acted as a lobbyist for them opposed tax increases on 04:13:25 20 cigarettes? 04:13:26 21 A Yes, sir. 04:13:27 22 Q And did their opposition to tax increases on 04:13:30 23 cigarettes depend on what the increase was to be used for 04:13:36 24 or were they consistently opposed to any tax increases, no 04:13:40 25 matter what?
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04:09:53 1 A That's my own hangup. 04:09:55 2 Q Okay. I'll accept that. 04:10:02 3 There was one document here, Mr. Matheson, in one 04:10:07 4 of the documents that you furnished, I believe, if you'll 04:10:10 5 just give me a moment, I can find it. 04:10:11 6 A Uh-huh. 04:10:12 7 Q Well, let me just tell you while I'm looking it. 04:10:22 8 And I believe it was authored by you and you'll correct me 04:10:30 9 and I think the document will speak for itself, but it 04:10:33 10 starts out by you saying in the document that the forces of 04:10:37 11 evil are at it again or they're back. Do you recall 04:10:39 12 something in a document like that? 04:10:41 13 A I have -- I'm absolutely certain I probably said 04:10:45 14 that at one time or another. 04:10:46 15 Q Okay. 04:10:47 16 A That is my style, I guess. 04:10:50 17 Q Just bear with me for a moment, if you would. 04:10:52 18 A Sure. 04:10:53 19 Q You also often sign your letters peace. What is 04:11:37 20 that? 04:11:37 21 A Peace and shalom, and I have used peace in the 04:11:43 22 congo. 04:11:46 23 MR. CREMIN: Should have brought a paralegal. 04:12:02 24 MR. MIKHAIL: It's one of those things you 04:12:04 25 remember seeing but don't remember -- almost done.	04:13:40 1 A Consistently opposed to tax increases, period. 04:13:43 2 Q Okay. Even if it was, let's say, for earmarking 04:13:46 3 it for cancer research? 04:13:50 4 A I don't recall any legislation like that, but 04:13:53 5 they would have been opposed to it. If it's a tax 04:13:56 6 increase, is a tax increase, is a tax increase, and they 04:13:58 7 ain't for it. 04:13:58 8 Q If it was for earmarking and improving health 04:14:01 9 care services in Oklahoma, they would have opposed it? 04:14:05 10 MR. STEWART: Object to the form. 04:14:06 11 MR. CREMIN: Are you asking him whether they did 04:14:08 12 or just speculate they might? 04:14:11 13 Q (BY MR. MIKHAIL) First, did they oppose any tax 04:14:14 14 increase? 04:14:14 15 A Yes. 04:14:15 16 Q Okay. From your experience in working as their 04:14:18 17 lobbyist, would they oppose any tax increase, from your 04:14:22 18 experience; was that their position? 04:14:26 19 A The position has been in opposition to tax 04:14:30 20 increases. There's never, to my knowledge, been any 04:14:34 21 specific information on if it was this area or this area, 04:14:39 22 we might change our mind, but, believe me, they don't tell 04:14:43 23 me everything they're thinking of in Winston-Salem. So, 04:14:46 24 you know, I don't know if something came along that 04:14:49 25 was for a specific purpose that they might be, you know,

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1 less opposed or not opposed, I just know that in anything  
 2 that has been proposed to date that I'm aware of, they have  
 3 opposed them.

4 Q Okay. You talked just a little bit about tort  
 5 reform this morning.

6 A Uh-huh.

7 Q And I don't want to plow the same field again but  
 8 just so that my mind is clear on this, did you ever work to  
 9 have laws passed or defeated that dealt with tort reform on  
 10 behalf of R.J. Reynolds in Oklahoma?

11 A No, sir.

12 Q One of the Tobacco Institute documents that was  
 13 produced to us makes reference to Oklahoma having increased  
 14 its cigarette taxes from 13 to 18 cents per pack in 1979.  
 15 And it says it was the first increase in 11 years. Has the  
 16 increase -- has cigarette taxes been increased since 1979,  
 17 since this increase from 13 to 18 cents?

18 MR. STEWART: Objection, form.

19 A There was a tax increase in 1987 that I'm aware  
 20 of that was, I believe -- I say '87, I'm going to say I'm  
 21 not 100 percent sure it's '97 (sic). I believe it was  
 22 1987, and it was a nickel a pack, in effect, or they do it  
 23 by mills. So if you have a 25 pack cigarettes or  
 24 something, they get every one of them, but it turned out to  
 25 be the equivalent of a nickel a pack on a 20 pack of

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1 cigarettes. And that raised -- at that time, raised the  
 2 tax to 23 cents a pack in Oklahoma.

3 Q (BY MR. MIKHAIL ) Is that what it is now?

4 A Yes, sir.

5 Q Okay. From your recollection, was that, that  
 6 legislation for the tax increase, the nickel that you're  
 7 talking about, was that during your tenure as a lobbyist  
 8 for RJR?

9 A No, sir.

10 Q Was it during your tenure as a lobbyist for the  
 11 Tobacco Institute?

12 A It was, but I was not involved in that issue.

13 Q Okay. One of the documents that you produced in  
 14 response to the subpoena was a memo to a Joe Murray, III  
 15 that we talked about earlier.

16 A Uh-huh.

17 MR. MIKHAIL: It was dated February the 9th,  
 18 1991. I'm not making that as an exhibit, Pat, because I'm  
 19 just going to refer to one sentence and ask him a question  
 20 about it. You're welcome to look at it if you'd like.

21 MR. CREMIN: That's all right.

22 Q (BY MR. MIKHAIL ) I just highlighted a section  
 23 here I'd wanted to ask you about. You're reporting to  
 24 Mr. Murray in this document about various restrictions or  
 25 bills dealing with restrictions and you make reference to,

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04:18:14 1 and I'm reading, "One bill to remove preemption on cities  
 04:18:15 2 passing stronger ordinances," and then you state in the  
 04:18:21 3 letter, "We have at this point, this taken," I think this  
 04:18:24 4 is a typo but, "We have at this point this taken care of in  
 04:18:29 5 committee." What did you mean by taken care of something  
 04:18:31 6 in committee, what does that mean?

04:18:34 7 A When was that?

04:18:35 8 Q You're welcome to look at it. It's February 9th,  
 04:18:40 9 1991.

04:18:40 10 A Okay.

04:18:42 11 MR. STEWART: What's the document number?  
 04:18:44 12 MR. CREMIN: RJ 0016 is the exact page. Looks to  
 04:18:48 13 me it began three pages earlier, so it would have been  
 04:18:52 14 probably 14.

04:18:53 15 A And I don't recall that specific instance, but  
 04:18:58 16 what I would normally mean would be one of two things, that  
 04:19:03 17 we had counted the votes among the committee members and  
 04:19:08 18 knew that there were not enough votes in that committee to  
 04:19:11 19 pass that bill. That would generally be the case.  
 04:19:15 20 Occasionally, a committee chair will decide because of  
 04:19:20 21 either the press of legislation or for personal reasons, or  
 04:19:24 22 whatever, that they don't want to hear a particular piece  
 04:19:27 23 of legislation. So by saying it's taken care of means it's  
 04:19:32 24 not going to be heard or there are enough votes to defeat  
 04:19:35 25 it.

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04:19:35 1 Q (BY MR. MIKHAIL) Okay. But you don't recall  
 04:19:41 2 specifically this reference?

04:19:42 3 A I really don't. There's been a lot of it in the  
 04:19:45 4 last 10 years.

04:19:47 5 Q Is Ken Nance a good effective lobbyist?

04:19:51 6 A Yeah, I think he's one of the best.

04:19:55 7 Q Do you consider yourself an effective lobbyist  
 04:19:57 8 for RJR?

04:20:01 9 A I guess -- I don't want to get in on the  
 04:20:06 10 semantics again on the definition of effective. I think  
 04:20:11 11 I've been effective simply because companies with  
 04:20:13 12 lobbyists, you don't stay with a company almost 11 years if  
 04:20:17 13 you haven't been effective.

04:20:19 14 Q So you believe that you have been able to  
 04:20:21 15 accomplish what RJR sought to have accomplished using your  
 04:20:27 16 services?

04:20:28 17 A To a large extent, yes. Not always, but to a  
 04:20:31 18 large extent.

04:20:31 19 Q You win some, you lose some, I guess, but  
 04:20:34 20 generally you've been successful?

04:20:35 21 A I would think so, yes, sir.

04:20:37 22 Q All right. Would you characterize the tobacco  
 04:20:57 23 industry's lobbyists in Oklahoma, of which you are one  
 04:21:06 24 since you are an RJR lobbyist, a successful lobbying team  
 04:21:12 25 for the industry?

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04:21:14	1	A Yes.	04:24:41 1 MR. CREMIN: I was just going to say, didn't you
04:21:19	2	Q Can you give me some examples of some of the losses that you -- that come to mind today?	04:24:43 2 love the looks of a damn spiral binder closing. Strike 04:24:48 3 damn, Roz.
04:21:27	4	A Losses in --	04:24:49 4 MR. MIKHAIL: The way the answer goes, it
04:21:29	5	Q You said you win some, you lose some.	04:24:51 5 dispenses with a whole bunch of the information.
04:21:31	6	MR. CREMIN: No, you said that, he didn't say	04:24:54 6 MR. CREMIN: I understand, I've done a few of
04:21:33	7	that.	04:24:56 7 these.
04:21:33	8	MR. MIKHAIL: He agreed with it, though.	04:24:58 8 MR. MIKHAIL: You have?
04:21:35	9	MR. CREMIN: He may not agreed with it. You left	04:24:57 9 MR. CREMIN: Yeah. I know it doesn't look like
04:21:39	10	out rainouts.	04:24:59 10 it, but I have.
04:21:41	11	MR. MIKHAIL: You want to get out of here at	04:25:00 11 MR. MIKHAIL: I can't tell. That doesn't need to
04:21:44	12	three, Pat?	04:25:04 12 be on the record.
04:21:45	13	THE WITNESS: I normally say that, you win some,	04:25:08 13 MR. CREMIN: Who's our next caller, Roz?
04:21:47	14	you lose some, some get rained out.	04:25:09 14 THE WITNESS: Better not leave a bunch of my
04:21:50	15	Q (BY MR. MIKHAIL) What are the losses?	04:25:12 15 stuff off the record.
04:21:58	16	A Well, because there's a tendency throughout the legislative process to compromise as you go along, usually	04:25:38 16 MR. MIKHAIL: I had eight exhibits marked. Based
04:22:02	17	a piece of legislation that passes is a product of the compromises that have occurred from the time it's entered	04:25:40 17 on some of the questions and the answers, I'm probably not
04:22:11	18	into, heard in committee, heard on the floor, goes to the next house and the floor, conference committee, and things	04:25:43 18 going to use some of these. My problem is if I am going to
04:22:15	19	like that. So it's rare that a piece of legislation passes	04:25:47 19 use one or two of these, I'll just have to change the
04:22:22	20	that isn't a series of compromises, whether it's related to	04:25:50 20 number. They haven't been -- I marked them myself. Is
04:22:26	21	the tobacco industry or anybody else. Yeah, there are	04:25:53 21 that all right with you gentlemen?
04:22:30	22	things that get rammed through now and then in some areas,	04:25:55 22 MR. CREMIN: I don't care.
04:22:38	23		04:25:58 23 MR. MIKHAIL: I'll just like change -- if it's
04:22:38	24		04:25:57 24 three, I'll change it to one.
04:22:38	25		04:25:58 25 MR. CREMIN: You can do that or you can just have
		Page 106	Page 108
04:22:43	1	if it's a leadership program or something, but I can't	04:26:00 1 three and five, I don't care.
04:22:47	2	think of anything right now that I would consider a	04:26:02 2 MR. MIKHAIL: I'd rather not, it would just be
04:22:50	3	specific loss.	04:26:03 3 easier. I just premarked these myself so it will make it
04:22:52	4	Q No major loss comes to mind?	04:26:07 4 quicker for everybody.
04:22:56	5	A Not right now.	04:26:08 5 MR. STEWART: We'll have legal assistants calling
04:22:58	6	Q Mr. Matheson, going back to something we talked	04:26:10 6 looking for number two.
04:23:00	7	about just before we broke for lunch about the preemption	04:26:12 7 MR. CREMIN: My paralegal marks them. I'm not
04:23:04	8	provisions in youth access bills. At the time that you	04:26:15 8 allowed to touch them. I'm not allowed to do much of
04:23:07	9	were lobbying in favor of the youth access bill in 1994,	04:26:17 9 anything. Now that we're off the record and he's
04:23:14	10	did R.J. Reynolds provide you with any studies and research	04:26:31 10 searching, a friend of mine created Frazier. Ken Levine,
04:23:20	11	that had been done in various parts of the country about	04:26:33 11 he did M*A*S*H, he did Cheers. He also does major league
04:23:23	12	the effectiveness of the various provisions dealing with	04:26:38 12 broadcasting.
04:23:27	13	youth enforcement in that proposed legislation?	04:26:40 13 MR. RIGGS: Is he from around here somewhere?
04:23:33	14	A I don't think so. I don't remember anything	04:26:41 14 MR. CREMIN: No, my brother -- I got a job years
04:23:36	15	specific.	04:26:44 15 ago for my brother with the Seattle Mariners. I represent
04:23:37	16	Q Were you aware that various studies had been	04:26:47 16 their broadcast crew.
04:23:40	17	conducted as to the effectiveness of various provisions	04:26:47 17 THE WITNESS: We're not off the record.
04:23:42	18	that were being proposed that showed that enforcement would	04:26:48 18 MR. CREMIN: Yes, we are. And Levine -- I mean,
04:23:47	19	be less, there would be less enforcement, and youth would	04:26:49 19 it's taping but -- and Levine, in addition to writing
04:23:51	20	have more access to tobacco as a result of many of those	04:26:52 20 television situation comedy, does baseball broadcasting.
04:23:56	21	provisions?	04:26:54 21 MR. RIGGS: I'll be darn.
04:23:58	22	A No, sir, I was not.	04:26:55 22 MR. CREMIN: Very clever. Let me bore you with
04:23:57	23	Q You're not aware of that?	04:27:00 23 one story.
04:23:58	24	A No, sir.	04:27:01 24 MS. POTTER: Excuse me, let me go off the record
04:24:00	25	Q Is that -- okay. We may be done sooner.	04:27:10 25 at 04:27:47.

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<p>1       (A recess was had.)</p> <p>2       MS. POTTER: Back on the record at 04:28:01.</p> <p>3       Q (BY MR. MIKHAIL ) I now know why I couldn't find</p> <p>4 it, it's not an exhibit, it's one of those other documents</p> <p>5 I just want to ask you a question about rather than make</p> <p>6 it -- clutter the record with it.</p> <p>7       One of the documents that you furnished to us in</p> <p>8 response to the subpoena was apparently transcribed notes</p> <p>9 of yours from an RJR meeting. It's S00/RJR.3608.</p> <p>10      MR. CREMIN: Except that's SOO, State of</p> <p>11 Oklahoma, not 00.</p> <p>12      MR. MIKHAIL: Oh, it is? Sorry about that.</p> <p>13      MR. CREMIN: State of Oklahoma, R.J. Reynolds.</p> <p>14      THE WITNESS: I thought it was SOO.</p> <p>15      MR. STEWART: So did RJR.</p> <p>16      Q (BY MR. MIKHAIL ) Okay. These are notes of a</p> <p>17 meeting that you apparently participated in and on the last</p> <p>18 page, page three, it refers to dos and don'ts. The first</p> <p>19 one, it says, "Know and understand basic industry</p> <p>20 positions, i.e. it is not scientifically proven that</p> <p>21 smoking cigarettes causes disease. RJR has no other</p> <p>22 position public or private." And this is a document dated</p> <p>23 12-11-89. Actually, 12-11 and 12, so it's December 11th</p> <p>24 and 12th of 1989. Do you recall this meeting?</p> <p>25      A If I looked at it, I might be able to.</p>	<p>04:30:49 1       A Yes, sir.</p> <p>04:30:49 2       Q Okay. And this information here, "i.e., it is</p> <p>04:30:54 3 not scientifically proven that smoking cigarettes causes</p> <p>04:30:57 4 disease," did you convey this message to legislators in</p> <p>04:31:01 5 Oklahoma?</p> <p>04:31:02 6       A No, not to my knowledge because that -- I look at</p> <p>04:31:08 7 that as an internal document that they would have -- that's</p> <p>04:31:14 8 a statement or a printed -- something maybe was printed or</p> <p>04:31:18 9 a statement that was made at the meeting and I took it down</p> <p>04:31:21 10 and -- but I've never stated that position anywhere that I</p> <p>04:31:27 11 could recall.</p> <p>04:31:28 12      Q Okay. The second one says, "Avoid discussion of</p> <p>04:31:34 13 RJR positions/info with opposition." Does that jog your</p> <p>04:31:40 14 memory of what that means?</p> <p>04:31:41 15      A Not really, but I would -- you know, all I could</p> <p>04:31:46 16 do is speculate what it means. I don't really know other</p> <p>04:31:51 17 than, you know, you don't go tell the other side, you know,</p> <p>04:31:55 18 what your positions are in certain ways. I mean, in any</p> <p>04:32:00 19 lobbying or any other endeavor, you're not going to tell</p> <p>04:32:05 20 Mr. Cremin what you're going to try to do next.</p> <p>04:32:08 21      Q I understand, but it says here, "Avoid discussion</p> <p>04:32:08 22 of RJR positions/info with opposition." Is the opposition</p> <p>04:32:14 23 we're referring to people that are attempting to influence</p> <p>04:32:17 24 the legislators the other way; in other words, contrary to</p> <p>04:32:20 25 what R.J. Reynolds wants?</p>
<p style="text-align: center;">Page 110</p> <p>1       Q It makes reference to certain individuals at the</p> <p>2 meeting.</p> <p>3       A Yeah. I don't know where this meeting was. I</p> <p>4 don't remember where this meeting was.</p> <p>5       Q It's nine years ago, I understand that, but you</p> <p>6 don't recall it? Does this refresh your memory?</p> <p>7       A Well, it says, "transcribed notes" and I'm trying</p> <p>8 to look like -- if this is something I transcribed. Is</p> <p>9 this something I provided?</p> <p>10      Q Yes, sir.</p> <p>11      A Okay. I guess I transcribed it then. Which</p> <p>12 meaning that I took my rough notes at the meeting and when</p> <p>13 I got back to town, at some time within a week or two, I</p> <p>14 sat down and, you know, put it in my -- in this case, in</p> <p>15 the computer the notes that I had taken from that meeting.</p> <p>16      Q Okay.</p> <p>17      A And this would be the type of meeting where they</p> <p>18 would go through a variety of subjects.</p> <p>19      Q Okay. What I wanted to ask you about is this</p> <p>20 reference to dos and don'ts. Your notes say, "Know and</p> <p>21 understand basic industry positions i.e., it is not</p> <p>22 scientifically proven that smoking cigarettes causes</p> <p>23 disease. RJR has no other position public or private." Do</p> <p>24 I take that to mean that that was something that was told</p> <p>25 you at this meeting?</p>	<p>04:32:22 1       A That would be how I would believe it.</p> <p>04:32:24 2       Q Okay. And what would be the reason for not</p> <p>04:32:26 3 discussing the positions and the information of RJR with</p> <p>04:32:30 4 the opposition?</p> <p>04:32:33 5       A Well, I think, again, it's just like whether I</p> <p>04:32:37 6 was lobbying for R.J. Reynolds or the blessed sisters of</p> <p>04:32:41 7 the poor, that I wouldn't want my opponents to know what</p> <p>04:32:44 8 actions I might take based on what information I have or</p> <p>04:32:51 9 what particular positions we have.</p> <p>04:32:53 10      Q Okay. This information is given to a legislator,</p> <p>04:32:59 11 it's made public to the legislator; in other words, it's</p> <p>04:33:01 12 not something that's secret, is it?</p> <p>04:33:03 13      A No, not necessarily. I mean, if you're talking</p> <p>04:33:05 14 about strategy of the way you're going to approach trying</p> <p>04:33:10 15 to get votes for or against a piece of legislation, there</p> <p>04:33:14 16 are a variety of parliamentary things that can be done</p> <p>04:33:20 17 within the legislative process. You wouldn't want the</p> <p>04:33:24 18 other side to know how you're going to go about, in effect,</p> <p>04:33:30 19 prosecuting your case. And that applies to almost every</p> <p>04:33:35 20 client. I mean, I can, you know, cite some specific</p> <p>04:33:40 21 examples, you know, with other clients anyway where you</p> <p>04:33:43 22 absolutely don't want the other side to know what you're</p> <p>04:33:45 23 going to do because it's a surprise or because you're going</p> <p>04:33:49 24 to use a certain rule or something to be able to get</p> <p>04:33:54 25 something done.</p>
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04:33:55 1 Q Is the opposition that you're referring to here	04:37:07 1 remember.	
04:34:00 2 public health officials, for instance?	04:37:08 2 Q Okay. What happened with that piece of	
04:34:03 3 A What's the date on that document, please?	04:37:09 3 legislation?	
04:34:04 4 Q December 11 and 12, 1989.	04:37:10 4 A It passed with no funding source. And I believe	
04:34:07 5 A Okay. That's the same one. At that time, we	04:37:11 5 there was a section of the bill that said any funds from	
04:34:14 6 would be talking about there was a group wandering around	04:37:12 6 state, federal, donations, et cetera, sources that, you	
04:34:17 7 at that time called GROSS, Get Rid of Secondhand Smoke,	04:37:13 7 know, will be -- it was what's known as a revolving fund in	
04:34:23 8 that was really two brothers and whoever else they could	04:37:14 8 the system, in the legislative system, in the state finance	
04:34:27 9 sign up. They made some radio appearances, they appeared	04:37:15 9 system, and that any funds that they could get, whether	
04:34:31 10 at the legislature and give away Twinkies wrapped in blue	04:37:16 10 they could get them from the feds or the state as an	
04:34:37 11 ribbon. And there was -- there was another group, you	04:37:17 11 appropriations or from private donations could go into that	
04:34:43 12 know, Save Us from Secondhand Smoke, or something like that	04:37:18 12 and be used for breast cancer research.	
04:34:47 13 at the time. I don't believe -- the health department has	04:37:19 13 Q All right. Can you think of any other	
04:34:53 14 people that are -- who work on smoking programs and promote	04:37:20 14 legislation that you, R.J. Reynolds, were on the same side	
04:34:59 15 smoking prevention programs, but they were not active in	04:37:21 15 of the public health community?	
04:35:01 16 the legislature at that time. There may have been some	04:37:22 16 A Well, public health community is pretty broad.	
04:35:06 17 people from the lung association at that time around. So	04:38:01 17 Q Public health meaning like the health department	
04:35:12 18 those were sort of the opposition groups that I recall from	04:38:02 18 and public health officials, not independent groups like	
04:35:15 19 that period of time.	04:38:03 19 the heart association or the American Cancer Association.	
04:35:18 20 Q Some of the voluntary health groups?	04:38:04 20 A That we were all on the same side on. I think	
04:35:17 21 A Yes.	04:38:05 21 when -- well, I don't know how to do this, but I think it's	
04:35:18 22 Q When I say voluntary, meaning not public	04:38:21 22 past the scope of our August 1996 date.	
04:35:21 23 officials?	04:38:22 23 Q It's past 1996?	
04:35:21 24 A Yes, and nonhealth groups, just sort of ad hoc	04:38:23 24 A Yeah. So I don't --	
04:35:24 25 organizations who have taken -- who decided to take on the	04:38:23 25 Q Before 1996, can you think of any --	
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04:35:27 1 issue.	04:38:36 1 A No, sir, not really.	
04:35:27 2 Q Mr. Matheson, in the years in question that we're	04:38:39 2 MR. MIKHAIL: Okay. Can we take a maybe three	
04:35:30 3 talking about in your capacity as a lobbyist for RJR, can	04:38:40 3 minute break and maybe we can wrap up. I just want to talk	
04:35:34 4 you recall an instance when you, meaning RJR, was on the	04:38:53 4 to my co-counsel.	
04:35:37 5 same side of a piece of legislation as the public health	04:38:54 5 MR. CREMIN: Yeah.	
04:35:42 6 community?	04:38:56 6 MS. POTTER: Off the record at 04:38:54.	
04:35:45 7 A Yes.	04:39:02 7 (A recess was had.)	
04:35:48 8 Q Can you tell me which one those are?	04:39:33 8 MS. POTTER: Back on the record at 04:52:36.	
04:35:49 9 A There was a -- and it's been about five or six	04:39:34 9 Q (BY MR. MIKHAIL) Okay. Mr. Matheson, just a	
04:35:54 10 years ago, there was a -- there was a bill by a Tulsa	04:39:40 10 couple more minutes, if you bear with me.	
04:35:58 11 representative, I believe, to provide funding for breast	04:39:43 11 A Okay.	
04:36:02 12 cancer research in Oklahoma. And we had agreed at that	04:39:44 12 Q One of the documents that you produced to us was	
04:36:06 13 time, "we" meaning the people in the tobacco community, to	04:39:46 13 a copy of a -- an editorial or article that was published	
04:36:23 14 support that legislation.	04:39:52 14 in the Tulsa Tribune on March 18, 1987 entitled, Smoking	
04:36:26 15 Q Was it a bill introduced to have funds earmarked	04:39:58 15 Ban is Beyond Common Sense, and it says by Charles "Mike"	
04:36:31 16 for that? Explain exactly what it was.	04:39:59 16 Nobles, N-o-b-l-e-s. And attached to it was a document	
04:36:34 17 A Well, it was -- the author at the time she	04:39:59 17 that you also produced to us in response to the subpoena	
04:36:37 18 introduced it says, "I don't have a funding source yet and	04:39:59 18 that is marked TIOK, that's Tobacco Institute Oklahoma, I	
04:36:40 19 I want to find a funding source throughout this process."	04:39:59 19 guess.	
04:36:45 20 And we involved ourselves enough that we would support it	04:39:59 20 A Probably not, but --	
04:36:50 21 and, frankly, if there was no tobacco tax on it.	04:39:59 21 Q 0018759. Maybe it was produced by TI.	
04:36:54 22 Q Okay. Did the piece of legislation designate	04:39:59 22 MR. CREMIN: That's produced by somebody else.	
04:36:57 23 part of the funding to be increases in tobacco taxes?	04:39:59 23 THE WITNESS: No, I produced that. I didn't	
04:37:00 24 A No, never did. Not from its introduction, nor	04:39:59 24 produce that?	
04:37:05 25 was an amendment ever offered to do that, as far as I	04:39:59 25 MR. CREMIN: Not that document, maybe another	

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1 copy.

2 MR. MIKHAIL: Produced by TI.

3 MR. STEWART: At least that copy was, yeah.

4 MR. MIKHAIL: Scott.

5 MR. MacLAREN: TIOK is a TI --

6 MR. MIKHAIL: Oklahoma?

7 MR. MacLAREN: Yeah.

8 Q (BY MR. MIKHAIL) In any event, it's a letter  
 9 from Karen Matheson to Stan, I'm assuming it's Stan Boman,  
 10 but I don't want to presume anything. But it says, "More  
 11 from Tulsa", and it attaches the point of view article.  
 12 And it says, "The point of view column was actually written  
 13 by Mandell and submitted by a friend of ours." Is that  
 14 your recollection of that editorial -- or not editorial but  
 15 point of view?

16 A March 23rd, 1987, depending on what that date  
 17 was, I was more than likely in Oklahoma City in session  
 18 with the legislature, and it's signed by my -- or at least  
 19 my wife's name is typed on here as our letterhead, so I  
 20 presume it came from our office. But, yes, I do  
 21 specifically remember this.

22 The actual fact is that Mike, who's an old friend  
 23 and I've done a lot of work -- did a lot of work for him  
 24 when he was still the president and the secretary-treasurer  
 25 of the United Food and Commercial Workers, and he put out

04:56:09 1 that a tobacco industry lobbyist was behind the piece, were  
 04:56:13 2 you?

04:56:14 3 A No, no. Because -- and, again, Mike had very  
 04:56:16 4 strong and does have very strong opinions on this. I'm  
 04:56:19 5 sure at some point we were talking about it, and whether I  
 04:56:22 6 suggested it or he suggested it, I don't remember. But in  
 04:56:25 7 my normal workings with him, I've written speeches for him,  
 04:56:29 8 newspaper articles for him. He outlines his thoughts and  
 04:56:33 9 basic concepts he wants in it and then I've gone in and  
 04:56:36 10 fleshed it out a little bit and he goes back through and  
 04:56:39 11 puts his -- makes sure he has his sort of imprimatur on it  
 04:56:43 12 with his final thoughts on it and then goes from there.

04:56:47 13 Q Do you recall -- I mean, it's been a while, but  
 04:56:50 14 do you recall now if there was any reason why you didn't  
 04:56:52 15 put your name as a co-author of the article?

04:56:55 16 A Well, that wouldn't be normal, I mean, because in  
 04:56:58 17 those days I did a lot of PR work for them and I guess I  
 04:57:02 18 was sort of a ghost writer for him on a number of  
 04:57:05 19 occasions.

04:57:08 20 Q Okay. Do you know if the newspaper in which it  
 04:57:11 21 was published, the Tulsa Tribune, was informed that you had  
 04:57:13 22 participated in the preparation of this article?

04:57:17 23 A I don't know.

04:57:17 24 Q You don't remember?

04:57:18 25 A No. I just -- I don't know. I mean, I --

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1 a, basically, wrote an outline of his thoughts on this  
 2 issue and then I, quote, fleshed it out and put it in a  
 3 more readable form and went back to him. He finished it  
 4 and he submitted it.

5 Q Okay. The original thoughts outlined or written  
 6 out was by Mr. -- or were by Mr. Nobles himself?

7 A Absolutely.

8 Q That's where they originated?

9 A Absolutely.

10 Q And did he bring it to you?

11 A You know, I really don't -- I don't remember. We  
 12 had talked about it. As I said, I did a lot of work for  
 13 Mike. Mike is an unusual and very bright person and he's  
 14 now writing book reviews in Colorado or something, but he  
 15 could get, you know, the really good forceful basic  
 16 thoughts down, and he did and does have very strong  
 17 opinions on smoking issues. And I don't recall whether I  
 18 asked him about it or whether he -- we were talking about  
 19 it and he volunteered it. I really -- I mean, it's  
 20 possible I asked him, it's possible he volunteered, and I  
 21 don't recall which.

22 Q Okay. The reference here in this letter says  
 23 that, "Was actually written by Mandell and submitted by a  
 24 friend of ours." You were not actually authoring it and  
 25 having someone else publish it so that it would not appear

04:57:22 1 Q You don't know?

04:57:22 2 A No.

04:57:24 3 Q All right. Fair enough. I would just like to  
 04:57:26 4 hand you these exhibits after all. I'm not going to go  
 04:57:31 5 over the information here. I want to hand you what I have  
 04:57:33 6 marked as Matheson 1, and your counsel have copies of it,  
 04:57:36 7 and ask you -- I don't want to stand over your shoulder,  
 04:57:39 8 but I want to take a look. If you'll just take a look at  
 04:57:43 9 the document, both pages of it, for a moment and tell me if  
 04:57:51 10 you authored this document that's marked Matheson 1. It  
 04:58:01 11 was, again, a document produced to us in response to the  
 04:58:03 12 subpoena.

04:58:03 13 A This -- this certainly is something I wrote, I'm  
 04:58:33 14 relatively certain, yeah.

04:58:36 15 Q Okay. Is this a true -- what I have marked as  
 04:58:39 16 Matheson 1 a true and correct copy of the document in your  
 04:58:42 17 file?

04:58:44 18 A Well, I didn't -- I don't think I produced this  
 04:58:47 19 document. I may have, and I don't know. Is there any way  
 04:58:53 20 we can tell?

04:58:53 21 Q The numbers would tell.

04:58:56 22 MR. CREMIN: Yeah.

04:58:56 23 A I did produce this, okay. So, yeah, it's  
 04:58:59 24 whatever came out of my files.

04:59:00 25 Q (BY MR. MIKHAIL) Okay. The original wouldn't be

<p style="text-align: center;">Page 121</p> <p>04:59:02 1 in your file because it appears that it was addressed to 04:59:05 2 Mr. Larry Bewley. Did the original get mailed or delivered 04:59:10 3 to Mr. Bewley?</p> <p>04:59:11 4 A It was either mailed or faxed. And sometimes I 04:59:17 5 fax, and depending on the document, if I want them to have 04:59:20 6 a really clean copy of it, I'll follow up and mail it, 04:59:23 7 but --</p> <p>04:59:24 8 Q But it was sent to them? In other words, I've 04:59:26 9 written letters that I've put in the drawer and never 04:59:29 10 mailed when I was angry or something.</p> <p>04:59:30 11 A I've done some I should have.</p> <p>04:59:32 12 Q Did you mail this Matheson 1?</p> <p>04:59:35 13 A I got it to him, and so I got it through fax, Fed 04:59:38 14 Ex, mail, whatever. We didn't have e-mail in those days, 04:59:42 15 it hadn't been invented yet.</p> <p>04:59:43 16 Q Okay. I'm going to hand you a second document 04:59:45 17 marked Matheson 2, and it's addressed to Joe Murray. Ask 04:59:48 18 you if you authored this document, Matheson 2?</p> <p>05:00:06 19 A Appears so, yes, sir.</p> <p>05:00:07 20 Q Okay. Is Matheson 2 a true and correct copy of 05:00:10 21 the document in your file? Again, understanding that the 05:00:13 22 document in your file is a copy as opposed to an original.</p> <p>05:00:16 23 A The document in my file I no longer have, but, 05:00:19 24 yeah, Mr. Cremin or somebody has them. But, yes, that's 05:00:22 25 something I wrote or appears I wrote that. Doesn't look</p>	<p style="text-align: center;">Page 123</p> <p>05:01:39 1 marked as Matheson 4 and ask you if you authored Matheson 4? 05:02:17 2 A That was a bad year, a long year. Filed a lot of 05:02:21 3 bills that year. Yes.</p> <p>05:02:30 4 Q And is Matheson 4 a true and correct copy of the 05:02:34 5 document that is in your file?</p> <p>05:02:35 6 A It appears to be, yes sir.</p> <p>05:02:36 7 Q And was this document sent to Joe Murray?</p> <p>05:02:38 8 A Yes, sir.</p> <p>05:02:39 9 Q Two more. I'm going to hand you what's been 05:02:43 10 marked as Matheson 5 and ask you if you authored Matheson 5?</p> <p>05:03:11 11 A Yes, sir.</p> <p>05:03:44 12 Q All right. And is Matheson 5 a true and correct 05:03:48 13 copy of the document in your file, the original of the 05:03:50 14 document in your file?</p> <p>05:03:52 15 A Appears to be, yes, sir.</p> <p>05:03:52 16 Q Okay. Understanding the original is, perhaps, 05:03:54 17 not in your file. Was this sent to David Powers?</p> <p>05:03:57 18 A Yes, sir.</p> <p>05:03:58 19 Q Matheson 5?</p> <p>05:03:58 20 A One method or another.</p> <p>05:03:59 21 Q All right. The last one is marked Matheson 6.</p> <p>05:04:02 22 I'm going to ask you if you'll take a look at it and tell 05:04:05 23 me if you authored Matheson 6?</p> <p>05:04:08 24 MR. CREMIN: That's part of Matheson 5, did you 05:04:10 25 realize that? It's the same thing.</p>
<p style="text-align: center;">Page 122</p> <p>05:00:26 1 like it's been changed in any way.</p> <p>05:00:27 2 Q You don't have any reason to doubt that this is a 05:00:29 3 true and correct copy of the original?</p> <p>05:00:31 4 A No, sir.</p> <p>05:00:31 5 Q All right. And was this document, Matheson 2, 05:00:34 6 sent to Joe Murray, whatever, by mail or fax or whatever?</p> <p>05:00:37 7 A Yes. Yes.</p> <p>05:00:38 8 Q Okay.</p> <p>05:00:39 9 A Since it actually has a 401 Main address on it, 05:00:43 10 I'm guessing I mailed it.</p> <p>05:00:44 11 Q Okay. Matheson 3, it appears to be a memo to 05:00:46 12 Mr. Murray from you. I'm going to ask you if you will take 05:00:52 13 a look at that and answer the same questions, ask you if 05:00:57 14 you authored this memo?</p> <p>05:01:23 15 MR. CREMIN: I'm sorry, "Since they can't play 05:01:23 16 football worth a damn."</p> <p>05:01:23 17 A Yes, sir.</p> <p>05:01:23 18 Q (BY MR. MIKHAIL) And is this, Matheson 3, a true 05:01:25 19 and correct copy of the document that is in your files, 05:01:26 20 understanding that --</p> <p>05:01:28 21 A It appears to be, yes, sir.</p> <p>05:01:30 22 Q All right. And was this document sent to 05:01:32 23 Mr. Murray?</p> <p>05:01:33 24 A By one method or another, yes, sir.</p> <p>05:01:35 25 Q Okay. And I'm going to hand you what's been</p>	<p style="text-align: center;">Page 124</p> <p>05:04:12 1 MR. MIKHAIL: What?</p> <p>05:04:13 2 MR. CREMIN: The last two pages of Matheson 5 05:04:16 3 just repeated.</p> <p>05:04:17 4 THE WITNESS: Yeah, it looks like it is, yeah. I 05:04:18 5 read through --</p> <p>05:04:21 6 MR. MIKHAIL: This is stapled to this.</p> <p>05:04:23 7 MR. CREMIN: Somehow you copied that twice. It's 05:04:25 8 even the same computer generated numbers for us.</p> <p>05:04:26 9 MR. MIKHAIL: That's fine. So we don't need 05:04:29 10 Matheson 6?</p> <p>05:04:31 11 MR. CREMIN: No.</p> <p>05:04:32 12 Q (BY MR. MIKHAIL) Okay. Well, Matheson 5 is two 05:04:36 13 documents together. Okay. That's fine. Let me ask you 05:04:38 14 then -- let's not worry about Matheson 6.</p> <p>05:04:42 15 In Matheson 5 on the second page, it lists bills 05:04:46 16 which died and it has in parentheses peacefully or 05:04:54 17 otherwise; do you see that, Mr. Matheson?</p> <p>05:04:58 18 A Yes, sir.</p> <p>05:04:59 19 Q Tell me very briefly what you meant by peacefully 05:04:59 20 and tell me what otherwise meant.</p> <p>05:05:02 21 A Generally, it's probably just a smart ass comment 05:05:07 22 from me. I have a tendency to be a bit irreverent and flip 05:05:14 23 in writing reports and things and it has no specific 05:05:19 24 meaning. Peacefully, I would suppose, is that it just died 05:05:25 25 a natural death by not being heard in committee and there</p>

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1 was no big fight over it or anything like that. If there  
 2 was a big battle on the floor in committee, it would be  
 3 otherwise, but more than likely, that's just -- as I'm  
 4 looking through here, most of these bills never made it --  
 5 as best I can recall, never made it out of committee. I  
 6 remember this one specifically that didn't.

7 And a lot of things on here that sometimes don't  
 8 directly relate to tobacco but we follow, we track  
 9 legislation in any area which might affect them. We  
 10 probably follow 15 titles of law just for them that --  
 11 where things may pop up, so some of these, I wouldn't of  
 12 had anything to do with along the way, perhaps, and -- but  
 13 they're on the list -- they were on the list of things we  
 14 were tracking and they did not pass. So we would -- we  
 15 would pass that information along. And then like I say, my  
 16 comment is my rather flippant attitude.

17 MR. MIKHAIL: Mr. Matheson, thank you very much.

18 THE WITNESS: Thank you.

19 MR. MIKHAIL: Gentlemen, thank you.

20 MR. STEWART: We've got some questions.

21 MR. MIKHAIL: You've got some questions? Oh, I'm  
 22 sorry. It may require some -- just follow-up questions if  
 23 you have something.

24 THE WITNESS: The lady here --

25 MS. POTTER: Could we place a microphone on you,

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1 please.

2 MR. CREMIN: You can probably hear me without  
 3 one, can't you?

4 MR. MacLAREN: How much do you have on the video  
 5 left?

6 MS. POTTER: Another hour.

7 CROSS EXAMINATION

8 BY MR. STEWART:

9 Q Mr. Matheson, have you ever told an Oklahoma  
 10 legislator that smoking is harmful?

11 A No.

12 Q Have you ever told an Oklahoma legislator that  
 13 smoking is not harmful?

14 A No.

15 Q So have you ever expressed your opinion on health  
 16 issues to Oklahoma legislators either way?

17 A Related to smoking?

18 Q Related to smoking.

19 A No, sir.

20 Q Are you a medical doctor?

21 A No.

22 Q Okay. Do you have any knowledge --

23 A Started it in the 9th grade but I couldn't get  
 24 past geometry.

25 Q Do you have any knowledge personally as to

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05:08:03 1 whether tobacco use is hazardous to your health?

05:08:06 2 A No, sir.

05:08:06 3 Q Do you believe that you, as a lobbyist, should  
 05:08:09 4 provide to Oklahoma legislators information on the health  
 05:08:13 5 effects of tobacco use?

05:08:16 6 MR. MIKHAIL: Object as to leading.

05:08:17 7 A No.

05:08:18 8 MR. MIKHAIL: You can answer.

05:08:19 9 Q (BY MR. STEWART) Why not?

05:08:24 10 A There are a lot of sources for that. There are  
 05:08:26 11 competing forces out there, as we discussed earlier, the  
 05:08:30 12 cancer society, the lung association, some people from the  
 05:08:33 13 Oklahoma State Department of Health, research -- not a lot  
 05:08:37 14 but some research staff, they get a lot of things in the  
 05:08:41 15 mail just like the rest of us do. There are other sources  
 05:08:44 16 to find that information.

05:08:45 17 Q So an Oklahoma legislator has other sources other  
 05:08:49 18 than you to get information on health -- on tobacco use?

05:08:52 19 MR. MIKHAIL: Object as to leading.

05:08:54 20 A Yes, they do.

05:08:56 21 Q (BY MR. STEWART ) In fact, one of the resources  
 05:08:59 22 you mentioned was the state Department of Health?

05:09:01 23 MR. MIKHAIL: Object, leading.

05:09:02 24 A Yes.

05:09:04 25 Q (BY MR. STEWART ) Okay. And that's there in the

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05:09:06 1 capitol building, in or near the capitol building in  
 05:09:08 2 Oklahoma City?

05:09:09 3 MR. MIKHAIL: Object, leading.

05:09:10 4 A They're near, they're about a mile away.

05:09:13 5 Q (BY MR. STEWART ) Okay. So there are state  
 05:09:14 6 resources available to legislators to get this  
 05:09:16 7 information?

05:09:16 8 MR. MIKHAIL: Object, leading again.

05:09:17 9 A As far as I know, yes.

05:09:19 10 Q (BY MR. STEWART ) Do you believe that Oklahoma  
 05:09:22 11 legislators recognize that a lobbyist is being paid by a  
 05:09:27 12 specific client?

05:09:28 13 A Generally, yeah. Of course, I mean, they -- you  
 05:09:32 14 go in and you tell them, I'm here for an R.J. Reynolds or  
 05:09:37 15 ABC Corporation today.

05:09:39 16 Q Have you ever talked to an Oklahoma legislator  
 05:09:41 17 without -- in your lobbyist capacity without telling them  
 05:09:44 18 who you represent?

05:09:47 19 A Only if they already knew it, if it was somebody  
 05:09:51 20 I knew well enough and they knew the issue I was talking

05:09:53 21 about and they knew who I represented, but I generally try  
 05:09:56 22 to make sure I tell them because as a contract lobbyist

05:10:00 23 with several clients, you have to say I'm wearing this hat  
 05:10:04 24 today, so, yeah.

05:10:06 25 Q And as a former legislator, did you understand --

<p style="text-align: center;">Page 129</p> <p>08:10:10 1 did you have lobbyists contact you when you were a 08:10:13 2 legislator?</p> <p>08:10:14 3 A Some, yes.</p> <p>08:10:15 4 Q Okay. And when that happened, did you understand 08:10:17 5 that they were representing a certain interest or certain 08:10:20 6 group?</p> <p>08:10:20 7 A Oh, yes. Yes.</p> <p>08:10:22 8 Q Did you, as a legislator, turn to sources other 08:10:23 9 than lobbyists for information on a specific topic?</p> <p>08:10:30 10 MR. MIKHAIL: Object, leading.</p> <p>08:10:30 11 A Absolutely, because I mean, you know, again, 08:10:34 12 you're getting -- you're getting one side of a picture and 08:10:40 13 I might get it from the staff or from another group. And 08:10:43 14 the other thing is that, generally, if there is another 08:10:46 15 side on an issue, they're there letting you know very 08:10:51 16 quickly.</p> <p>08:10:56 17 Q (BY MR. STEWART) Before today, had you ever 08:10:59 18 heard or seen the Frank Statement to smokers that 08:11:03 19 Mr. Mikhail mentioned to you earlier?</p> <p>08:11:05 20 A I still haven't seen it. And, no, I haven't.</p> <p>08:11:08 21 Q So before -- before 1987, were you aware of any 08:11:14 22 public statements by Reynolds as to their position on 08:11:18 23 smoking and health -- excuse me, on the health effects of 08:11:21 24 tobacco use?</p> <p>08:11:23 25 A No.</p>	<p style="text-align: center;">Page 131</p> <p>08:12:57 1 can be a \$100 fine and up to 30 days in jail. And, 08:13:00 2 frankly, as I became more aware of that recently when they 08:13:06 3 were doing a redo of some of the ADAMHA stuff, they tried 08:13:11 4 to repeal that.</p> <p>08:13:13 5 Q (BY MR. STEWART ) As far as you're aware, was 08:13:14 6 that law on the books from 1987 through 1994?</p> <p>08:13:18 7 A I couldn't really say how long it's been on the 08:13:20 8 books. I know it was there when I was in the legislature, 08:13:23 9 which is in the '70s, but I don't remember. I wouldn't 08:13:26 10 know.</p> <p>08:13:26 11 Q But from your time period working for Reynolds, 08:13:28 12 from 1987 to 1996 --</p> <p>08:13:32 13 A That's been on the books. Is that your question?</p> <p>08:13:34 14 Q Yes.</p> <p>08:13:36 15 MR. MIKHAIL: I object as to leading again.</p> <p>08:13:38 16 Q (BY MR. STEWART ) You also discussed with 08:13:43 17 Mr. Mikhail that you don't -- you couldn't recall any major 08:13:47 18 losses that you encountered as a lobbyist for Reynolds; is 08:13:51 19 that correct?</p> <p>08:13:53 20 A Yes, sir.</p> <p>08:13:54 21 Q Do you recall any major wins?</p> <p>08:13:59 22 A I think what, and I'm trying to recall this 08:14:03 23 right, that I talked about that they're all nearly always a 08:14:06 24 series of compromises. When the final product is done and 08:14:19 25 your client hasn't been damaged, I suppose you call that a</p>
<p style="text-align: center;">Page 130</p> <p>08:11:34 1 Q I believe Mr. -- sorry I do this to your name and 08:11:37 2 I shouldn't. Mr. Mikhail asked you some questions about 08:11:41 3 whether Reynolds had ever proposed or sponsored or helped 08:11:47 4 to sponsor a youth access law prior to 1994. Do you 08:11:51 5 remember that topic of questioning?</p> <p>08:11:53 6 A Yes.</p> <p>08:11:54 7 Q And I believe you had said it was your knowledge 08:11:57 8 there was just one instance before 1994 that you had worked 08:11:59 9 on behalf of Reynolds on a youth access to tobacco type of 08:12:05 10 law?</p> <p>08:12:05 11 A Yeah, and I don't know that I said I worked on 08:12:08 12 behalf of Reynolds. It was a bill we saw that looked like 08:12:13 13 it was good legislation. I told them that I was working on 08:12:16 14 it and they didn't tell me to quit, but I don't know it was 08:12:20 15 a piece of legislation introduced by somebody not at my 08:12:24 16 behest or the company's behest, but it's something we 08:12:27 17 thought we could work on and it was a good piece of 08:12:29 18 legislation.</p> <p>08:12:30 19 Q Prior to 1994, were there any laws in Oklahoma 08:12:34 20 that would have impacted youth access to tobacco?</p> <p>08:12:37 21 MR. MIKHAIL: Object as to form.</p> <p>08:12:38 22 A Yeah. I mean, I've been aware of the view for 08:12:44 23 years in the criminal statutes in Title 21, there's been a 08:12:47 24 provision in the law and it's been there a long time, I 08:12:50 25 don't know how long, that to sell tobacco to a minor is --</p>	<p style="text-align: center;">Page 132</p> <p>08:14:23 1 win, but it's a work product of a variety of people. So I 08:14:27 2 couldn't say I personally won or R.J. Reynolds personally 08:14:30 3 won, but it may be that, quote, the industry feels like 08:14:34 4 they won or that they came out a little better than they 08:14:38 5 would have in the beginning.</p> <p>08:14:39 6 Q But even in those situations where you feel like 08:14:43 7 you did -- it was an adequate result for your client, 08:14:47 8 you're telling me that that was the result of compromise?</p> <p>08:14:49 9 MR. MIKHAIL: I object as to leading again.</p> <p>08:14:51 10 A Well, not just comprise because, also, when -- 08:14:56 11 let's -- if there's a bill that's got tobacco companies 08:15:01 12 and the restaurant association and the retail merchants -- 08:15:08 13 I mean, not retail merchants, I'm sorry, the oil marketers 08:15:13 14 involved in it, the lobbyists will take a list of how the 08:15:18 15 101 House members and break it up and each one talk to 10 08:15:22 16 or 12 or 15, whatever it takes. So I would have maybe only 08:15:26 17 talked to a fifth or a sixth of the members of the 08:15:31 18 legislature about the bill, so I mean, I wouldn't have -- 08:15:36 19 it would be a work product of five or six people doing 08:15:40 20 that.</p> <p>08:15:43 21 Q (BY MR. STEWART) As a lobbyist, do you have a 08:15:46 22 vote in the Oklahoma legislature?</p> <p>08:15:50 23 A No. As a matter of fact, you can't even go on 08:15:53 24 the floor.</p> <p>08:15:54 25 Q Is it correct to say that a lobbyist, any</p>

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1 lobbyist, determines the outcome of a bill?  
 2 MR. MIKHAIL: Object, leading.  
 3 A What do you mean by determines the outcome?  
 4 Q (BY MR. STEWART) If a lobbyist said, "This is  
 5 the way the bill is going to be decided," is that  
 6 guaranteed that that's the way a bill will be decided?  
 7 A No. No, of course not. I mean, the only way  
 8 that works is if the author decides that. Now, if the  
 9 author agrees with the lobbyist, that might happen, but  
 10 that author has to know -- has to know that somewhere along  
 11 the way that he or she is going to be involved with some  
 12 compromise on legislation. It's very rare somebody comes  
 13 out and says, you know, this is holy writ from God and it  
 14 has to be passed just like it is.  
 15 Q Have you ever given false information to an  
 16 Oklahoma legislator?  
 17 A Not to my knowledge and never intentionally.  
 18 Q Do you believe you've ever misled an Oklahoma  
 19 legislator?  
 20 A Personally, no.  
 21 Q Do you believe Oklahoma legislators make up their  
 22 own mind on how to vote?  
 23 A Well, they make the decision based on the  
 24 information or they make the decision based on political  
 25 reasons, they make the decisions based on what the folks

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1 back home think, but they're the ones that eventually have  
 2 to say, yes, I want to vote this way or that way.  
 3 MR. MACLAREN: I've got about three questions.  
 4 CROSS EXAMINATION  
 5 BY MR. MACLAREN:  
 6 Q Mr. Matheson, my name is Scott MacLaren. I'm  
 7 here on behalf of the Tobacco Institute. I just have a few  
 8 follow-up questions. Are you aware of any lobbyist on  
 9 behalf of the tobacco industry that provided false or  
 10 misleading information to any legislator?  
 11 A No.  
 12 Q Are you aware of any lobbyist on behalf of the  
 13 tobacco industry that misled any legislator in any way?  
 14 A No, sir, I'm not aware of any, no.  
 15 Q Are you aware of any legislator who has not voted  
 16 his own conscience on any particular piece of legislation?  
 17 A You know, I don't know what's in their  
 18 conscience. I know the process by which legislators go  
 19 through to make votes and I could tell you maybe something  
 20 that I have done in the past, I'm not going to, but I don't  
 21 know --  
 22 MR. MIKHAIL: He's on your side.  
 23 THE WITNESS: I'm still not going to tell him.  
 24 Q (BY MR. MACLAREN) Can a lobbyist like yourself  
 25 introduce legislation on the floor of the House or the

05:18:39 1 Senate?  
 05:18:39 2 A No. You can request someone, but that's it.  
 05:18:42 3 MR. MACLAREN: That's all I have. Thank you.  
 05:18:45 4 MR. MIKHAIL: Pat, do you have any questions?  
 05:18:48 5 MR. CREMIN: I'm not going to ask any questions.  
 05:18:50 6 MR. MIKHAIL: You asked for the microphone.  
 05:18:52 7 MR. CREMIN: It's because I like that feel. I'm  
 05:18:55 8 hoping I'll be asked a question by some famous reporter.  
 05:18:59 9 MR. MIKHAIL: Are you going to ask questions?  
 05:19:01 10 MR. CREMIN: No.  
 05:19:02 11 MR. MIKHAIL: Okay. And I have couple of  
 05:19:03 12 follow-ups.  
 05:19:04 13 REDIRECT EXAMINATION  
 05:19:04 14 BY MR. MIKHAIL:  
 05:19:04 15 Q Isn't it true, Mr. Matheson, we were talking  
 05:19:06 16 about -- Mr. Stewart was talking about legislators voting  
 05:19:11 17 on legislation. Isn't it true that the vast majority of  
 05:19:16 18 the bills that are reflected on Exhibits 1 through 5, as  
 05:19:24 19 well as the legislation that we talked about in our  
 05:19:26 20 deposition today, the members of the legislature in  
 05:19:32 21 Oklahoma didn't get a chance to vote on them; isn't that  
 05:19:35 22 true?  
 05:19:36 23 A You said the majority, and I don't know. I'd  
 05:19:42 24 have to look at --  
 05:19:46 25 Q Let's take a look at them.

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<p>08:21:26 1 Exhibit 4. Of the ones listed on Exhibit 4, if you'll      08:21:32 2 examine that exhibit, could you tell me which of the bills      08:21:35 3 on Exhibit 4 were, from what is indicated on the document      08:21:39 4 and from your recollection, were voted on by either the      08:21:43 5 full House or the full Senate?</p> <p>08:21:47 6 A As I recall, the Senate Bill 626 was passed by      08:21:53 7 the Senate.</p> <p>08:21:54 8 Q Okay.</p> <p>08:21:54 9 A And I believe died in House committee. That's      08:21:59 10 just trying to recall that. 809, it says essentially the      08:22:05 11 same as above bill. I don't remember that bill number at      08:22:09 12 all unless -- well, I can't be -- I can speculate, but I      08:22:16 13 don't know.</p> <p>08:22:17 14 1040 went to the governor's desk. The ADAMHA      08:22:22 15 bill passed. SJR 10, "Requiring the State Education      08:22:30 16 Employees Group Insurance Board to study health costs      08:22:35 17 associated with use of tobacco products, alcohol and      08:22:38 18 illegal drugs." It says it's dead, so this would have been      08:22:42 19 at the end of a two year session because it's in 1990 --      08:22:45 20 no, it would have been at the beginning of the two year      08:22:47 21 session. '94 -- no, be the end of a two year session.      08:22:53 22 So -- and I don't specifically recall. I mean, I have a      08:22:58 23 vague recollection of it, but I don't recall. I never did      08:23:00 24 do any work on it as far as I can remember.</p> <p>08:23:13 25 41. "Constitutional amendment increasing taxes on</p>	<p>08:24:12 1 were about or anything, just if you know.</p> <p>08:24:15 2 Q (BY MR. MIKHAIL) If you can just tell me -- just      08:24:15 3 glance at them, you don't have to read them out loud.</p> <p>08:24:18 4 A Some were, some weren't.</p> <p>08:24:20 5 Q (BY MR. MIKHAIL) Can you tell me which ones were      08:24:22 6 voted on by the full House and full Senate -- or full      08:24:26 7 Senate, sorry?</p> <p>08:24:29 8 A 1015, House Bill 1015 was at one time. It passed      08:24:35 9 through and then it passed the House and was hung up in the      08:24:39 10 Senate, and portions of it were taken and put into the      08:24:42 11 ADAMHA bill and passed, which was a vote by both houses of      08:24:46 12 the legislature.</p> <p>08:24:48 13 1303, posting signs on alcoholic beverages where      08:24:52 14 sold and cigarettes are sold, vending machines; never got      08:24:55 15 out of committee, as I recall.</p> <p>08:25:01 16 1562, I don't remember anything about.</p> <p>08:25:05 17 The one on vending machines, I don't remember      08:25:08 18 anything about.</p> <p>08:25:15 19 1865 was a system of revocation permits to retail      08:25:22 20 dealers in 3.2 beer. I don't recall -- looks like      08:25:30 21 something probably didn't get out of committee, but I don't      08:25:32 22 really know.</p> <p>08:25:34 23 2010 probably didn't get out of committee.</p> <p>08:25:45 24 This says that House Bill 2129 authorizing      08:25:48 25 restaurants to have smoking or nonsmoking or be totally</p>
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<p>08:23:13 1 insurance" --</p> <p>08:23:13 2 THE COURT REPORTER: I'm sorry, I cannot      08:23:14 3 understand what you're saying.</p> <p>08:23:16 4 THE WITNESS: I'm sorry, I was mumbling.</p> <p>08:23:18 5 MR. CREMIN: Just read it to yourself and then      08:23:19 6 she doesn't have to write all of that.</p> <p>08:23:22 7 THE WITNESS: Say what?</p> <p>08:23:24 8 MR. CREMIN: Read it to yourself, don't read it      08:23:25 9 out loud and then she doesn't have to transcribe every      08:23:25 10 word.</p> <p>08:23:25 11 THE WITNESS: Senate Bill Resolution 41 which      08:23:28 12 related -- it was a constitutional amendment on insurance      08:23:31 13 and tobacco products, alcohol and beverages; dead. I don't      08:23:35 14 recall doing any work on that. It was one of those sort of      08:23:41 15 like off-the-wall proposal. It wasn't done by --      08:23:44 16 leadership bills like that just don't make it, generally.      08:23:52 17 The --</p> <p>08:23:53 18 MR. CREMIN: You're absolutely right. If I      08:23:55 19 might, the question was can you tell by looking at that      08:23:59 20 which ones actually were voted on by the full legislature      08:24:02 21 versus which ones died in some form of committee. That's      08:24:05 22 all.</p> <p>08:24:06 23 MR. MIKHAIL: Without being voted on by the full      08:24:09 24 House or the Senate.</p> <p>08:24:10 25 MR. CREMIN: You don't have to define what they</p>	<p>08:23:51 1 smoking or nonsmoking died, which is correct. Those      08:23:55 2 provisions were put into another bill and did pass and      08:23:58 3 that's the law in Oklahoma today.</p> <p>08:24:03 4 2130, I don't remember.</p> <p>08:24:15 5 2208, I don't remember. I think it died in      08:24:17 6 committee.</p> <p>08:24:18 7 2222 could have died. I think died in      08:24:22 8 committee.</p> <p>08:24:26 9 House Bill 2617 passed the House. It's to      08:24:31 10 require child abuse reports to include nicotine among the      08:24:34 11 harmful substances to which infants are born addicted to or      08:24:42 12 exposed to and requirements to be kept --</p> <p>08:24:45 13 THE COURT REPORTER: I can't understand what      08:24:48 14 you're saying.</p> <p>08:24:45 15 MR. CREMIN: Don't read them.</p> <p>08:24:47 16 THE WITNESS: How the hell is anybody supposed to      08:24:49 17 know what I'm talking about?</p> <p>08:24:51 18 Q (BY MR. MIKHAIL) Just answer by the number.</p> <p>08:24:52 19 A 2617, bill passed, was voted on by committee and      08:24:57 20 the full House and then was amended in Senate committee and      08:27:05 21 died on the Senate floor, I believe.</p> <p>08:27:08 22 House Bill 2795 was amended and voted on by the      08:27:15 23 entire House. That's about it.</p> <p>08:27:16 24 Q Okay. I'm going to hand you Exhibit 5 and ask      08:27:19 25 you to do the same thing, but try, if you would, not to</p>

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1 read out what each one says, just identify because it's  
2 already an exhibit to the deposition.

3 A Okay.

4 Q And all I want you to do is designate the ones  
5 that were actually voted by either the full House or  
6 Senate. You don't have to mention the ones that were not.

7 A On the first page of this, which is two different  
8 exhibits or two different sets of things, there are no bill  
9 numbers listed. It just says --

10 Q I understand, just go to the next page.

11 A House Bill 2494 passed, voted on by both Houses  
12 and passed.

13 House Bill 2493 was withdrawn by the author.

14 House Bill 1007, I don't remember.

15 House Bill 1200 died by vote in committee.

16 House Bill 1639, I believe passed the House and  
17 died in the Senate judiciary committee.

18 House Bill 2161, I don't remember. I don't think  
19 it got to the floor.

20 House Bill 2640, which didn't have anything to do  
21 with, apparently -- I don't know, I didn't do anything on  
22 it, so I don't know.

23 House Bill 2591, I believe passed the House, died  
24 in the Senate.

25 House Bill 3015 relates to product liability and

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1 I didn't have anything to do with that.

2 House Bill 3018, two year limitation of product  
3 liability, I didn't do any work on that, so I don't know.

4 Senate Bill 95 did not come out of committee in  
5 the Senate at the author's request.

6 Senate Bill 309, I believe passed the Senate and  
7 died in the House, either in committee or on the floor.

8 Senate Bill 367, I just don't recall the number,  
9 what it did.

10 Senate Bill 387 came out of Senate committee and  
11 was killed pretty severely on the Senate floor on  
12 preventing sale of butane lighters.

13 635 relating to deceptive trade practices act,  
14 that's not anything I worked on. It says it died, but I  
15 don't know how.

16 House Bill 2938 did pass and was voted on by both  
17 houses.

18 House Bill 2494 passed, was voted on by both  
19 houses.

20 Q Okay. Mr. Matheson, in your work as a lobbyist  
21 for R.J. Reynolds, isn't it true that one of your first  
22 objectives in defeating a proposed bill is to try to get it  
23 assigned to a committee that you would believe would be  
24 more favorable to defeat or kill the bill in that committee  
25 rather than it going forward to the floor?

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05:30:55 1 A Well, I think that what we've tried to do over  
05:31:03 2 the last few years is to have a system where bills that are  
05:31:13 3 related to certain subject matters go to certain committees  
05:31:17 4 where they always have gone. For instance, in the House,  
05:31:21 5 tobacco legislation has historically over the last 10 years  
05:31:26 6 or so has gone to the commerce, industry and labor  
05:31:29 7 committee. And Senate usually is general government,  
05:31:37 8 but --

05:31:37 9 Q Are you saying that you attempt for R.J. Reynolds  
05:31:41 10 as a lobbyist to see that bills introduced that R.J.  
05:31:44 11 Reynolds is against and wants defeated, to see to it that  
05:31:48 12 it is assigned to the committee that it traditionally goes  
05:31:51 13 to; is that what you're telling me?

05:31:53 14 MR. STEWART: Objection, form.

05:31:56 15 A Yes, sir.

05:31:55 16 Q (BY MR. MIKHAIL) It is not to get it to a  
05:31:57 17 committee that it would be -- it would have more of a  
05:32:01 18 chance of being defeated in committee?

05:32:03 19 A I would not work to put it in a committee where  
05:32:05 20 it would have a chance to be passed.

05:32:07 21 Q Okay. And isn't it true that the next step, that  
05:32:11 22 if it goes to a committee, whether it's a favorable  
05:32:15 23 committee or an unfavorable committee, either way, and you  
05:32:18 24 want, meaning R.J. Reynolds, wants the legislation or the  
05:32:21 25 proposed bill defeated, that it wants to -- and you, on

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05:32:27 1 behalf of R.J. Reynolds, try to get it defeated in  
05:32:29 2 committee as opposed to going forward?

05:32:31 3 MR. CREMIN: I'm going to object to form of the

05:32:33 4 question only because you did about three stops and I'm  
05:32:36 5 just not sure, but go ahead and answer.

05:32:37 6 Q (BY MR. MIKHAIL) Once it gets to a committee,  
05:32:40 7 whether it's a favorable or an unfavorably committee in  
05:32:40 8 your client's perspective and in your perspective?

05:32:40 9 A We start working on counting the votes in that  
05:32:44 10 committee and talking to the members to try to defeat that  
05:32:47 11 bill in committee, yes.

05:32:48 12 Q Okay. Isn't it true that one of the ways, one of  
05:32:50 13 the effective ways of doing that is to make sure that you  
05:32:56 14 influence the chair of the committee?

05:32:58 15 A That's the method some people use.

05:33:00 16 Q Do you use it?

05:33:02 17 A Rarely, if ever.

05:33:03 18 Q Well, the definition of a lobbyist that I pulled  
05:33:05 19 out of Webster's says that you try to influence the outcome  
05:33:12 20 of legislation. And I'm asking you, did you attempt for  
05:33:15 21 RJR as a lobbyist to influence what happens to a bill in  
05:33:19 22 committee by contacting or talking to the chair of the  
05:33:22 23 committee?

05:33:25 24 A I'm trying to think, because that's not normally  
05:33:29 25 something I do because I don't -- I don't believe in the

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05:33:33 1 process working that way, but I am sure that at least once 05:33:39 2 in the past I have talked to a committee chairman about 05:33:43 3 that, but my general approach is usually that, you know, it 05:33:48 4 would be nice if you didn't want to hear it, but if you're 05:33:51 5 going to, I understand that, I'd just like to know so I can 05:33:53 6 work with the committee members if I need to. 05:33:55 7 Q All right. Isn't it a fact, Mr. Matheson, that 05:33:58 8 in many bills that are in committee, that the actual will 05:34:04 9 of the legislature is really exhibited or reflected by what 05:34:10 10 a handful of committee members do and not the full House or 05:34:15 11 full Senate; isn't that true? 05:34:17 12 A It is -- that is true in almost every committee 05:34:20 13 on almost any area of legislation you want to talk about. 05:34:24 14 Q I understand. So when you set out to defeat 05:34:26 15 legislation that you -- that R.J. Reynolds opposed and 05:34:30 16 wanted defeated, it was really a matter of trying to get a 05:34:33 17 handful of legislators in committee decide with you and not 05:34:37 18 the entire House or entire Senate; isn't that correct? 05:34:39 19 MR. CREMIN: Object to the form. 05:34:40 20 Q (BY MR. MIKHAIL ) While it was in committee? 05:34:42 21 MR. STEWART: Same objection. 05:34:43 22 A That's the way the entire -- that's what's called 05:34:46 23 the committee process. 05:34:48 24 Q (BY MR. MIKHAIL) I understand. 05:34:48 25 A And that's how it works.	05:35:32 1 that, preserving the record. Go ahead. 05:35:35 2 RECROSS EXAMINATION 05:35:35 3 BY MR. STEWART: 05:35:35 4 Q Mr. Matheson, the committee structure in the 05:36:00 5 Oklahoma legislature, is that set up by the Oklahoma 05:36:04 6 constitution? 05:36:05 7 A No. 05:36:05 8 Q How is it set up? I mean, what provides for that 05:36:08 9 structure? 05:36:09 10 A It's a rather archaic and arcane system, but the 05:36:19 11 Speaker of the House appoints all chairs, all co-chairs, 05:36:23 12 all members of all committees. 05:36:26 13 Q Was that system set up before you became a 05:36:28 14 lobbyist for Reynolds? 05:36:30 15 A Oh, yeah. 05:36:32 16 Q And I asked you some questions earlier about the 05:36:35 17 representations that you make to Oklahoma legislators, 05:36:40 18 correct; do you remember those? 05:36:40 19 A Uh-huh. 05:36:42 20 Q Are committees in the Oklahoma legislature made 05:36:44 21 up of individual Oklahoma legislators? 05:36:47 22 A Sure. 05:36:48 23 Q Okay. So my questions I asked you about your 05:36:50 24 representations to Oklahoma legislators, does that apply -- 05:36:54 25 would your answers be the same if we're talking about a
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05:34:50 1 Q I understand. 05:34:52 2 A And if you -- if there are 18 members of 05:34:54 3 committee and you can get 10 committed to either side, you 05:34:57 4 know, you're going to be successful in keeping that bill 05:35:01 5 out of committee. 05:35:01 6 Q So it wouldn't be -- I'm sorry. Go ahead. 05:35:03 7 A That's it. 05:35:04 8 Q It wouldn't be in R.J. Reynolds' interest to have 05:35:07 9 it go to the full floor of the House or the Senate if it 05:35:11 10 was opposed to the legislation? 05:35:13 11 A Well, I don't know whether it's in R.J. Reynolds' 05:35:15 12 interest or not. It's not in mine because I have to work a 05:35:18 13 hell of a lot harder if it gets to the full House, I got to 05:35:24 14 go to 101 members instead of maybe 15. 05:35:26 15 MR. MIKHAIL: That's all I have. 05:35:29 16 MR. CREMIN: I don't have anything else. You 05:35:31 17 want to borrow this again because you don't have my dulcet 05:35:36 18 tones. 05:35:36 19 MR. MIKHAIL: Just for the record, I'm going to 05:35:38 20 object to you having follow-up, but it may be permitted, I 05:35:41 21 don't know. 05:35:42 22 MR. STEWART: As opposed to you having follow-up? 05:35:46 23 MR. MIKHAIL: Well, it's my deposition. If 05:35:48 24 you're permitted, go ahead. I can't stop you. I'm just 05:35:52 25 objecting to preserve my objections. You're really good at	05:36:57 1 specific committee member? 05:36:58 2 A Sure. I mean, they're still legislators and the 05:37:01 3 same rules still apply. 05:37:02 4 Q And committee members still make up their own 05:37:05 5 minds? 05:37:05 6 MR. MIKHAIL: Object, leading. 05:37:07 7 A I sure hope they do. 05:37:08 8 MR. STEWART: I just have one other thing. I'd 05:37:11 9 like to ask that the entire transcript be put under seal 05:37:14 10 pursuant to paragraph seven of the June 1st, 1998 05:37:19 11 confidentiality order regarding lobbying activities. 05:37:22 12 Actually, it was signed by the judge on June 1st, and it 05:37:26 13 was filed June 1st, too. It was agreed as to form by 05:37:29 14 plaintiffs and defendants and provides that any 05:37:33 15 confidential information that is gleaned from confidential 05:37:36 16 documents marked highly confidential that is discussed in a 05:37:40 17 deposition can be -- the deposition needs to be placed in a 05:37:46 18 sealed envelope marked with the caption of a case and held 05:37:50 19 under seal in accordance with the local rules and practices 05:37:53 20 of this Court for such pleadings and documents. Exhibits 1 05:37:56 21 through 6 were marked -- Exhibits 1 through 5 were marked 05:37:59 22 confidential and I believe some of the documents that 05:38:01 23 Mr. Mikhail discussed with Mr. Matheson that were not 05:38:04 24 marked as exhibits were also marked confidential. 05:38:05 25 MR. MIKHAIL: Kelly, just for clarification

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1 purposes, I may let David and Jerry address this, but are  
 2 you -- they're more familiar with the order of  
 3 confidentiality. Are you permitted or any party under the  
 4 order permitted to make a blanket designation of the entire  
 5 deposition as sealed?

6 MR. STEWART: I don't believe I even have to make  
 7 a designation. I think that this order says that where any  
 8 confidential information is discussed in a deposition, it  
 9 shall be marked in words and substance and state  
 10 confidential protective order and the language I entered  
 11 in. So I don't think I necessarily have to do this, but I  
 12 am making sure on the record that I believe the entire  
 13 transcript, because I don't know how we can parcel out what  
 14 was confidential versus what wasn't. So at this point, I'd  
 15 like to ask that the entire transcript be placed under  
 16 seal, and we can try to come up with an agreement if you  
 17 disagree with me or whatever, but I'd just like it be that  
 18 way at this point.

19 MR. MIKHAIL: I understand. I'm going to let  
 20 them address it, if at all. There may not be anything they  
 21 want to say.

22 MR. EVANS: I will address it. I need just a  
 23 moment.

24 MR. MIKHAIL: I think we're done.

25 MS. POTTER: This is the end of tape two. Off

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1 the record at 05:40:29.  
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## 1 C E R T I F I C A T E

2 STATE OF OKLAHOMA )  
 3 COUNTY OF OKLAHOMA)

4 I, DEANN BROWN, Certified Shorthand Reporter  
 5 within and for the State of Oklahoma, do hereby certify  
 6 that the above-named Mandell Matheson was by me first duly  
 7 sworn to testify the truth, the whole truth, and nothing  
 8 but the truth, in the case aforesaid; that the above and  
 9 foregoing deposition was by me taken in shorthand and  
 10 thereafter transcribed; that the same was taken the 6th day  
 11 of October, 1998, in the City of Tulsa, County of Tulsa,  
 12 State of Oklahoma, pursuant to notice and subpoena, and  
 13 under the stipulations hereinbefore set out; and that I am  
 14 not an attorney for nor relative of any of said parties or  
 15 otherwise interested in the event of said action.

16 IN WITNESS WHEREOF, I have hereunto set my hand  
 17 and official seal this 14th day of October, 1998.

18

19

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DEANN BROWN, CSR, RPR, CRR  
State of Oklahoma, No. 921

21

22

DeAnn Brown  
Oklahoma Certified Shorthand Reporter  
Certificate No. 00921  
Exp. Date: December 31, 1999

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